GEPA, 20 U.S.C. 1234e(c)(1982), these funds are available for expenditure until September 30, 1994. The SSD's plan, which has been submitted by the SEA, is to train its personnel in a transdisciplinary team approach to serving children with disabilities. The training has five major components: (1) initial training on the transdisciplinary team approach of providing services to students with disabilities; (2) concept support training, including Project RIDE (Responding to Individual Differences in Education), the nationally recognized program for at-risk students aimed at helping students who have difficulty functioning successfully in the regular classroom; (3) monthly site-based meetings; (4) consultation with recognized experts and trainers; and (5) evaluation to continue modification of the process as appropriate and planning to continue implementation district-wide. The training will be provided to 18 teams on the concept of transdisciplinary service and the process of working as a team. Each team will be composed of one general education teacher, one general education counselor, two special education teachers, one speech/language pathologist, and one special education area coordinator. Approximately ten occupational/physical therapists, serving multiple teams, will also be included. These teams will benefit from the initial two-day training workshop which focuses on the transdisciplinary approach. In addition, there will be supplemental training: follow-up sessions, one mid-way in the project and one near the end of the project period. The teams will also be participating in the monthly meeting guided by the local Project Leader.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to Missouri under a grantback arrangement. The grantback award would be in the amount of $167,585, which is approximately 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that the SEA submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 1994, in accordance with section 456(c) of GEPA;

(c) The SEA will, not later than January 1, 1995, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue, or enter into a repayment agreement for those debts.

Dated: July 26, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.027, Handicapped State Grants)

[FR Doc. 94–18616 Filed 7–29–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
August 1, 1994

Part VII

Department of Education

Office of Education and Research and Improvement

Notice of Public Meetings; Invitation To Comment

DEPARTMENT OF EDUCATION

Office of Education Research and Improvement (OERI)

Notice of Public Meetings

AGENCY: Department of Education.

ACTION: Notice of Public Meetings—Invitation to Comment.

SUMMARY: This notice provides the schedule for a series of three public meetings. The Office of Educational Research and Improvement (OERI) is sponsoring these meetings in cooperation with the Secretary's Regional Representative for each of the designated sites to seek public comment on issues regarding the recompetition of the regional educational laboratories. Written comment may be submitted at the time of the public meetings or may be submitted by mail, FAX, or electronic mail to the number or addresses listed below in the **ADDRESSES** section.

DATE, TIME, AND LOCATION: Meetings will be held in three metropolitan areas, starting at 9:00 a.m. and ending at 4:00 p.m.

The dates and locations of the meetings are as follows:

- August 22, 1994—Oakland, CA—Edward R. Roybal Auditorium, Third Floor, Oakland Federal Building, 1301 Clay Street, *Contact:* Loni Hancock, 415–556–4920
- August 23, 1994—Denver, CO—U.S. Forest Service Auditorium, 740 Simms Street, *Contact:* Lynn Simons, 303–844–3544
- August 25, 1994—Boston, MA—The Walsh Theater of Suffolk University, Suffolk University, 55 Temple Street, *Contact:* Ed O'Connell 617–223–9317.

DEADLINE FOR WRITTEN COMMENT: Written comments must be received on or before September 30, 1994.

ADDRESSES: All comments and questions concerning this notice, as well as requests for a supplementary reference package which includes the legislation [Part D, Section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994]; a list of names and addresses of the regional educational laboratories, and a Discussion Paper on regional educational laboratory issues should be forwarded by:

- Mail to Adria White, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 500–m, Washington, DC 20208–5644.
- Fax to 202–219–2106.
- Internet electronic mail:

—send comments only to: Lab__Comments@inet.ed.gov

—send questions only to: Lab__Questions@inet.ed.gov

—to request the supplementary reference package, and from the e-mail address where you wish to receive the material, send e-mail to almanac@inet.ed.gov and in the body of the message type "send LabPackage" (without the quotes); leave the Subject line blank and avoid the use of any signature block.

FOR FURTHER INFORMATION CONTACT: Individual coordinators for meetings, whose telephone numbers are listed in the DATE, TIME, AND LOCATION section, or U.S. Department of Education staff at Lab__Questions@inet.ed.gov via Internet electronic mail.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 31, 1994, President Clinton signed Public Law 103–227. Title IX of that legislation, known as the Educational Research, Development, Dissemination, and Improvement Act of 1994, includes new authorizing legislation for the Regional Educational Laboratory Program [Part D, Section 941(h)]. The U.S. Department of Education is seeking public comment on aspects of this recently enacted legislation for the Regional Educational Laboratory Program which will be implemented through the recompetition of the regional educational laboratories. The competitions will be announced in the fall of 1994 and carried out during the winter, spring and summer of 1995, with new five-year awards effective December 1, 1995. To help prepare for this competition, the U.S. Department of Education is holding a series of 3 public meetings from August 22 through August 25, 1994.

The agenda for each meeting will be as follows:

9:00–9:30—Registration
9:30–10:00—Briefing on Background of Meeting
10:00–12:00, 1:00–4:00—Presentations/Comments

Purposes of the Public Meetings and Opportunity for Written Comment

The regional educational laboratories are intended to complement the work of other educational agencies (including State departments of education, school districts, colleges and universities, private firms, and other organizations) to improve the quality of educational policy and practice. Laboratories apply the best available knowledge from research, development and effective practice to identify and help meet educational needs in specified geographical areas of the country. Each laboratory operates under the guidance of a regionally representative governing board.

The funding cycle for the ten regional educational laboratories is scheduled to end November 30, 1995, and the Congress has instructed OERI to conduct an open competition for future laboratory support. The Assistant Secretary wishes to hear from as many people as possible regarding OERI's efforts to improve education through the work of the regional educational laboratories. Following the meetings, OERI will review written comments, and this information will be taken into consideration as final guidelines for the competition are developed.

The following are specific issues on which comment is sought:

Laboratory Regions

There are now 10 regions served by regional educational laboratories. The laboratory regions and the States or insular areas assigned to each region are listed below.

- Appalachian Region (KY, TN, VA, WV)
- Central Region (CO, KS, MO, NE, ND, SD, WY)
- Mid-Atlantic Region (DC, DE, MD, NJ, PA)
- Midwestern Region (IA, IL, IN, MI, MN, OH, WI)
- Northeastern Region (CT, MA, ME, NH, NY, PR, RI, VI, VT)
- Northwestern Region (AK, ID, MT, OR, WA)
- Pacific Region (American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Hawaii, Republic of the Marshall Islands, Republic of Palau)
- Southeastern Region (AL, FL, GA, MS, NC, SC)
- Southwestern Region (AR, LA, NM, OK, TX)
- Western Region (AZ, CA, NV, UT)

Current laboratory regions vary in the number of assigned States, with regions having as few as four and up to as many as nine States or insular areas. Existing laboratory regions also vary in the number of elementary and secondary school-age students in the region.

The new authorizing legislation permits the Secretary of Education to establish up to two additional laboratory regions with a minimum of four contiguous States if approved by key educators in the States that would be included in a new region.

1. How adequate are the current laboratory regions?

2. What is the advisability of creating one or two new laboratory regions?

3. Based on the requirements of the new legislation, are there specific adjustments in regional boundaries that you would suggest?

Laboratory Mission and Functions

The new legislation requires that each regional educational laboratory promote the implementation of broad-based systemic school improvement strategies. The legislation also specifies numerous functions such as needs assessment, applied research, development, dissemination, technical assistance services, and training. An extensive list of required laboratory duties is specified in OERI's reauthorization legislation, [Part D, Sec. 941(h)(3), (4) and (5)].

4. What are the most important needs, issues, activities, and client groups on which the laboratory in your region should focus its resources over the next several years?

5. What is an appropriate distribution of laboratory effort among these functions based on the needs in your region and what should be emphasized the most?

Regional Educational Laboratories as a National Resource

The new legislation requires the governing boards of the regional educational laboratories to establish and maintain a network to work on joint activities to meet the needs of multiple regions and to serve national as well as regional needs.

6. What crosscutting themes are most important for the laboratories to address as a network?

7. What portion of the laboratory work should address national needs?

Additional Issues

Comments also are invited on the following questions:

8. In what specific ways should the laboratories and the Department work together to address national priorities such as systemic, standards-based reform?

9. What should be the relationship between the laboratories and other agencies within the region that are involved in research, development, dissemination, or technical assistance?

Invitation to Comment

OERI invites interested persons to make an oral presentation on the meeting dates scheduled. To make an oral presentation, contact, in advance the coordinator for the meeting you wish to attend. Interested persons wishing to make an oral presentation who do not contact the appropriate coordinator in advance, may schedule an oral presentation in person on the day of the meeting, if slots are available—speakers will be scheduled on a first-come, first-served basis. Presentations may not exceed ten minutes. Oral testimony should be accompanied by a written statement to be included in the meeting record.

The Assistant Secretary encourages persons unable to participate in a meeting to send their comments to the Office of Educational Research and Improvement at the addresses listed in the **ADDRESSES** section. Written comments will become part of the official record of these meetings if they are submitted no later than September 30, 1994.

Dated: July 26, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–18618 Filed 7–27–94; 1:58 pm]

BILLING CODE 4000–01–P

federal register

Monday
August 1, 1994

Part VIII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Delinquency Prevent Program Guideline; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Delinquency Prevention Program Guideline

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of final guideline for the Office of Juvenile Justice and Delinquency Prevention's Title V Delinquency Prevention Program.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) published a proposed guideline for the Title V Delinquency Prevention Program on February 11, 1994, and solicited public comments. Based on the analysis of those public comments, OJJDP is issuing this final guideline. This Program is of interest to all Federal, State, local, and private organizations involved with prevention planning and services for children, youth and families.

DATES: This final guideline is effective on August 1, 1994.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, Room 742, 633 Indiana Avenue, N.W., Washington, DC 20531

FOR FURTHER INFORMATION CONTACT: Paul E. Steiner, Social Science Program Specialist, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, at the above address. Telephone (202) 307–5924.

SUPPLEMENTAL INFORMATION: Section 504(1) of the JJDP Act directs OJJDP to issue "such rules as are appropriate and necessary to carry out" the Title V—Incentive Grants for Local Delinquency Prevention Programs.

Changes to Proposed Guideline

The following changes are made to the proposed guideline. New language is italicized.

Throughout the guideline, references to "units of local government" are changed to "units of *general* local government."

The following sentence is added to the last paragraph under "Local Subgrantee Qualifications": *State Advisory Groups may not arbitrarily exclude an eligible unit of general local government from competing for Title V funds.*

Under "Application Requirements for State Agencies," the first sentence is amended as follows: State agencies must provide evidence of the State Advisory Group's authority to approve the award of Title V subgrants *or, where a separate supervisory board is vested with such authority, to review and recommend approval to the board. No Title V subgrants can be made to a unit of general local government absent the approval or recommendation of the State Advisory Group.*

Under "Application Requirements for State Agencies," the following paragraph is inserted after the fifth paragraph of that section: *The application must include a time-task plan providing a description of the major tasks which the State will employ to implement the Title V program, and the timeframes for completing each of those tasks.*

Under "Application Requirements for State Agencies" the fourth paragraph is amended as follows: 2. To monitor and *assure* the audit of subgrants for performance, outcome, and fiscal integrity, including cash and in-kind match, *as specified in the current edition of the Office of Justice Programs Guideline Manual M–7100, "Financial and Administrative Guide for Grants."*

The first sentence under "Process for Subgrant Award and Administration" is amended to read: State agency grantees shall use essentially the same process for making Title V subawards as that used for the Formula Grant awards, with the State Advisory Group *establishing applicant eligibility criteria to target specific types of communities, if needed, and making or recommending* the final decision on funding *individual applications.*

Under "Application Process for Units of general local government," subsection 3. "Local Three-Year Delinquency Prevention Plan," the following sentence is inserted between the second and third sentence of the second paragraph of the subsection: *The applicant should also assure that the PPB, to the extent possible, contains one or more members under the age of twenty-one, one or more parents or guardians with children who have had contact or are at risk of having contact with the juvenile justice system, and an overall membership that generally reflects the racial, ethnic, and cultural composition of the community's youth population.*

Under the section titled "Application Process for Units of General Local Government," subsection 3. "Local Three Year Delinquency Prevention Plan," the eleventh paragraph (paragraph j.) is amended to read: A description of how the PPB will *provide general oversight for developing the plan, approve the plan prior to submission to the State, and* make recommendations to the responsible local agency for the distribution of funds and evaluation of funded activities.

Under the section titled "Duration of Grants and Continuation Funding," the following changes are made: (1) The following sentence is stricken: Grants may be awarded for project periods of 12 to 36 months, with initial awards of up to one year. The following two sentences replace the stricken sentence: *OJJDP will award grants to States for a project period beginning on the date of award and ending on September 30, 1996. States will award grants to units of general local government in annual increments covering not more than 12 months each, with overall project periods of 12 to 36 months;* and (2) in the second sentence the word "continuation" is stricken and replaced with *Subsequent years'.* At the end of that sentence, "subsequent fiscal years" is stricken.

Background

A new program was authorized in the 1992 amendments to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (hereafter "the Act" or "the JJDP Act") in Title V, Sections 501–506, "Incentive Grants for Local Delinquency Prevention Programs Act." For Fiscal Year 1994, Congress appropriated $13 million for initial implementation of Title V.

Prevention has been one of the primary goals of the Act since its enactment in 1974. The premise is that preventing delinquent behavior is a much more cost-effective means of reducing juvenile crime than attempting to rehabilitate adjudicated delinquents. Prevention is also a much more cost-effective way to deal with juvenile delinquency. In addition to reducing the human and financial losses caused by crime, effective delinquency prevention also reduces the need for costly juvenile justice system processing and adjudication. Each year, juvenile courts handle approximately 1.4 million delinquency and status offense cases, resulting in nearly 130,000 out-of-home placements. On any given day, approximately 90,000 juveniles are held in juvenile detention, correctional and shelter facilities. Nationally, nearly $2 billion a year is spent operating these facilities. The average annual cost of confining a juvenile in a training school exceeds $45,000 in many States. The cost for intensive, private residential treatment for a serious juvenile offender can run as high as $100,000 per year. The cost for construction of secure facilities for juveniles is currently about $100,000 per bed.

In order to be eligible to fully participate in the Formula Grants Program of the JJDP Act, States must develop and adhere to policies, practices, and laws which deinstitutionalize status offenders and nonoffenders, separate adults and juveniles held in secure institutions, and eliminate the practice of detaining or confining juveniles in adult jails and lockups. In addition, States must address efforts to reduce the disproportionate representation of minority juveniles in secure facilities, where such condition exists. These four goals (deinstitutionalization of status offenders, separation, jail removal, and disproportionate minority confinement) are commonly called the Formula Grants Program "mandates," and are a major focus of States' Federally funded efforts under the Act. In order to meet statutory requirements for compliance, approximately 70% of the States at one time or another have devoted 100% of all available formula grant funds toward meeting the mandates. Thus, many States have been limited in the amount of JJDP Act funds that could be devoted to prevention.

Title V of the JJDP Act is designed to provide a dedicated fund source for States to award grants for delinquency prevention and early intervention programs for local communities, provided that the applicant unit of general local government, or combination thereof, is in compliance with the JJDP Act mandates.

Congress has structured the Title V Delinquency Prevention Program to support such units that have formulated a community-wide strategy to address the prevention of delinquency. A community will be required to have a prevention strategy based on assessment of risk factors associated with the development of delinquent behavior in the community's children.

Title V authorizes the Administrator of OJJDP to make grants to a State, to be transmitted through the State Advisory Group, to units of general local government for delinquency prevention programming. The State agency which administers the JJDP Act Formula Grant in each State will be eligible to apply for funding and receive an amount determined by a formula based on the State's population of youth under the maximum age of original juvenile court delinquency jurisdiction, with a minimum allocation of $75,000 per State and $25,000 per Territory.

States will invite units of general local government that meet the statutorily mandated eligibility requirements, and as further limited by the State Advisory Group, to apply for funding. In order to be eligible, local applicants must: (1) Be certified by the State Advisory Group to be in compliance with the JJDP Act Formula Grants mandates; (2) designate or convene a local Prevention Policy Board; and (3) develop a local, comprehensive delinquency prevention plan.

Approach

Many past delinquency prevention planning and programming efforts, while well intentioned, have been unsuccessful because of their negative focus on attempting to prevent juveniles from misbehaving. Another weakness of past delinquency prevention efforts is their narrow scope, generally focussing on only one or two aspects of a child's life such as individual behaviors or family problems. Successful delinquency prevention strategies must be positive in their orientation and comprehensive in their scope.

Positive approaches that emphasize opportunities for healthy social, physical and mental development and take into account individual, family, peer group, school, and community influences on a child's development have been shown to have a much greater likelihood of success.

Risk-focused delinquency prevention is a comprehensive approach based on the premise that in order to prevent a problem from occurring, the factors that contribute to the development of that problem must be identified and addressed.

Research conducted over the past half century has clearly documented five categories of risk factors for juvenile delinquency: (1) Individual characteristics such as alienation, rebelliousness and lack of bonding to society; (2) family influences such as parental conflict, child abuse, poor family management practices, and family history of problem behavior (substance abuse, criminality, teen pregnancy, and school dropouts); (3) school experiences such as early academic failure and lack of commitment to school; (4) peer group influences such as friends who engage in problem behavior (minor criminality, drugs, gangs and violence); and (5) neighborhood and community factors such as economic deprivation, high rates of substance abuse and crime, and neighborhood disorganization.

To counter these risk factors, protective factors must be introduced. Protective factors are qualities or conditions that moderate a juvenile's exposure to risk. Research indicates that protective factors fall into three basic categories: (1) Individual characteristics such as a resilient temperament and a positive social orientation; (2) bonding with pro-social family members, teachers, adults, and friends; and (3) healthy beliefs and clear standards for behavior. While individual characteristics are difficult to change, bonding and clear standards for behavior work together and can be changed. To increase bonding, children must be provided with: (1) Opportunities to contribute to their family, school, peer group and community; (2) skills to take advantage of opportunities; and (3) recognition for efforts to contribute.

At the same time, parents, teachers and communities need to set clear standards regarding pro-social behavior.

A risk-focused delinquency prevention approach calls on communities to identify the risk factors to which their children are exposed. Risked-focused delinquency prevention provides communities with a conceptual framework for prioritizing the risk factors in their community, assessing how their current resources are being used, identifying resources which are needed, and choosing specific programs and strategies that directly address those risk factors through the enhancement of protective factors.

This approach requires a commitment by and participation of the entire community in developing and implementing a comprehensive strategy. While the roles of governmental agencies in this strategy will vary, it is essential that the citizens of the community create a diverse and representative coalition in which public officials and agencies are equal members with private citizens and agencies. It is this coalition which leads the community's prevention strategy in addressing the needs of children and their families at risk.

Another key component of this approach is the coordination and use of existing programs and resources. A community-wide prevention strategy must inventory available State, local, private, and Federal resources, and develop vehicles for making these resources and programs readily accessible to children and families in need. Thus, applicants for Title V funds are encouraged to coordinate this prevention effort with other Federally funded efforts.

Target Population

The Title V Delinquency Prevention Program is based on a program design which addresses those risk factors which are known to be associated with delinquent behavior. The program seeks to address these factors at the earliest appropriate stage in each child's

development. The target population is all at-risk children in a given community. Funds awarded under this program will be used to address delinquency risk-factors in communities, and as such may be used to fund ameliorative services for at-risk children.

Funding Structure

Title V, Section 505 of the Act, authorizes the Administrator of OJJDP to make grants to a State, to be transmitted through the State Advisory Group, to units of general local government.

Technical Assistance

Because the Title V Delinquency Prevention Program is based on a risk-focused program structure, OJJDP will make training and technical assistance on risk-focused prevention available to representatives of units of general local government through the State agency administering the program.

Program Goal

The goal of this program is to reduce delinquency and youth violence by supporting communities in providing their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster a healthy and nurturing environment which supports the growth and development of productive and responsible citizens.

Program Objectives

The objectives of the program are:

1. To form coalitions within communities to mobilize the community and direct delinquency prevention efforts;
2. To identify those known delinquency risk factors which are present in communities;
3. To identify protective factors which will counteract identified risk factors, and develop local comprehensive, delinquency prevention plans to strengthen these protective factors;
4. To develop local comprehensive, delinquency prevention strategies which use and coordinate Federal, State, local and private resources for establishing a client-centered continuum of services for at-risk children and their families;
5. To implement the delinquency prevention strategies, monitor their progress, and modify the plans as needed.

Basic Program Design

The program will be implemented in two phases: the pre-award planning phase and the implementation phase. Applicant units of general local government may modify or enhance existing prevention planning boards, plans and strategies to meet the requirements for Title V funding.

Planning Phase

The planning phase for each local applicant will occur prior to the award of funds and consist of the designation or formation of a local policy board to direct the project, and the development of a three-year delinquency prevention plan. OJJDP is making training and technical assistance available through the State agency to interested potential local applicants during this phase. Eligible State agencies may apply for and receive Title V awards from OJJDP based on this final Title V Guideline.

Implementation Phase

The implementation phase will begin with the award of subgrants to units of general local government. Technical assistance will continue to be available to grantees.

Funding Structure and Grantee Qualifications

Title V authorizes the Administrator of OJJDP to make grants to States to be transmitted through the State Advisory Groups to qualified units of general local government or combinations thereof. The State Advisory Group is the board appointed by the chief executive officer of the State, as provided by Section 223(a)(3) of the Act (Section 503). A unit of general local government means any city, county, town, borough, parish, village, or other general purpose political subdivision of a State, and any Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior. . . (Section 103(8)).

OJJDP will award grants to States based on a formula determined by each State's relative population of youth below the maximum age limit for original juvenile court delinquency jurisdiction. The States will subgrant the funds to qualified units of general local government based on a competitive process. Jurisdictions that do not have discrete units of general local government may award funds directly to governmental agencies or private nonprofit organizations to implement projects in furtherance of the jurisdiction's own comprehensive prevention strategy.

All Title V funds must be matched by recipient units of general local government or by the State with 50% of the amount of the grant. This match may be provided in cash or the value of in-kind contributions or services. States are encouraged to supplement Title V funds with Formula Grant funds. However, Formula Grant funds cannot be used as match for Title V funds.

State Grantee Qualifications

Each State, as defined in Section 103(7) of the Act, is eligible to apply for Title V funds, provided that it has a State agency designated by the chief executive under Section 299(c) of the Act, and a State Advisory Group appointed pursuant to Section 223(a)(3) of the Act. The applicant State agency must provide an assurance that the State Advisory Group has or will have the sole authority, consistent with State law or policy, to approve or recommend approval of Title V subgrants to units of general local government, pursuant to the provisions of this program guideline.

Local Subgrantee Qualifications

In order for a unit of general local government to be eligible to apply for Title V funds, such unit, or each unit applying in combination, must be certified by the State Advisory Group as in compliance with Sections 223(a)(12)(A), 223(a)(13), 223(a)(14), and 233(a)(23) of the JJDP Act. If a State is not currently in full compliance with any of the first three of these mandates, i.e. the quantifiable mandates, or is in full compliance with *de minimis* exceptions, only those units of general local government which are within the de minimis parameters provided in 28 CFR 31.303(f)(6)(i) and (f)(6)(iii)(A), based on the locality's most current census data, may be deemed in compliance with the mandates of Sections 223(a)(12)(A), (13), and (14).

In order to be in compliance with Section 223(a)(23), the State Advisory Group must certify that the unit of general local government is cooperating in data gathering and analysis to determine if disproportionate minority confinement exists, or if it is known to exist within the boundaries or jurisdiction of the unit of general local government, the unit has made or is making an adequate effort toward addressing, or assisting the State to address, this issue.

The State Advisory Group will competitively award, or recommend for award, Title V grants to units of general local government based on how well competing units meet the competitive criteria set forth below under *Priority Consideration for Funding*. State Advisory Groups may not arbitrarily exclude an eligible unit of general local government from competing for Title V funds.

Application Process—Eligible State Agencies

All State agencies designated by the chief executive under Section 299(c) of the Act are eligible to apply for Title V funds. A list of these agencies and the allocations of funds to the State for a particular fiscal year may be obtained from OJJDP.

Application Requirements for State Agencies

State agencies must provide evidence of the State Advisory Group's authority to approve the award of Title V subgrants or, where a separate supervisory board is vested with such authority, to review and recommend approval to the board. No Title V subgrants can be made to a unit of general local government absent the approval or recommendation of the State Advisory Group. Examples of such authority would be an executive order, a statute, a formal resolution of the State Advisory Group, a formal resolution of the supervisory board which the State Advisory Group advises, or a written agreement between the State agency and the State Advisory Group.

The application must also include an assurance that the State Advisory Group and the State agency will establish written subgrantee eligibility criteria, described above under *Local Subgrantee Qualifications*, and competitive criteria based on the criteria described below under *Priority Consideration for Funding*. The State may issue additional criteria, including criteria designed to focus delinquency prevention efforts toward those areas of the State displaying the greatest need of comprehensive delinquency prevention planning and programs.

Furthermore, the application must provide the following administrative assurances:

1. To report on all subgrant awards, within thirty days of award, on the OJJDP form, "Individual Project Report, Part I: Initial Report of Funding";

2. To monitor and assure the audit of subgrants for performance, outcome and fiscal integrity, including cash and in-kind match, as specified in the current edition of the Office of Justice Programs Guideline Manual M–7100, "Financial and Administrative Guide for Grants";

3. To collect quarterly progress and data reports, and forward semi-annual summary reports to OJJDP.

The application must include a time-task plan providing a description of the major tasks which the State will employ to implement the Title V program, and the timeframes for completing each of those tasks.

All awards will be conditioned with additional requirements which are standard for recipients of Federal grants.

State agencies which demonstrate a need to do so in their applications to OJJDP, may use up to 5% of the State's Title V allocation for the costs of administering the Title V subgrants and support for State Advisory Group activities related to Title V. A budget narrative must explain how the administrative funds will be spent, including provision of the required match by the State.

State Application Deadline

State applications are due to OJJDP not later than 60 days after the effective date of this guideline.

Technical Assistance Role of State Agency and State Advisory Group: In their capacities as the primary planning vehicles for juvenile justice and delinquency prevention programs within the State, the State agency and the State Advisory Group are encouraged to assume a role as a technical assistance resource for local subgrantees, as well as serving as a resource and information clearinghouse for all prevention activities in the State. The data and strategies developed on the local level should be incorporated in the State Advisory Group's and State agency's statewide, comprehensive planning efforts, as required by Section 223 of the Act. To this end, State agencies and State Advisory Groups are strongly encouraged to participate in risk-focused prevention training and technical assistance made available by OJJDP.

Process for Subgrant Award and Administration

State agency grantees shall use essentially the same process for making Title V subawards as that used for Formula Grant awards, with the State Advisory Group establishing applicant eligibility criteria to target specific types of communities, if needed, and making or recommending the final decision on funding of individual applications. This includes the Request for Proposals, competitive review of applications, and award of subgrants. Likewise, State agencies will monitor Title V subgrants in a similar manner as the Formula Grant subgrants, including the collection and reporting of data required by this program guideline.

In considering applications for awards, State Advisory Groups should be sensitive to the unique needs of rural areas and Native American tribes, including provision of special consideration in the competitive process.

All subgrants should be awarded within 180 days after receipt of the award from OJJDP.

Application Process for Units of General Local Government

1. Pre-application Certification of JJDP Act Compliance

Units of general local government must obtain a certification of compliance from the State Advisory Group prior to applying for an award of funds.

2. Delinquency Prevention Training

OJJDP is making training in risk-focused prevention available to 45 sites across the nation during fiscal year 1994. The only cost associated with this training for participants will be transportation and lodging, if necessary. Facilities for the training will be provided by the States or localities. Training is designed to assist communities in preparing the three year plans required for Title V funding. The initial training will consist of a one day introduction to the theories and strategies of risk-focused prevention planning. Units of general local government considering applying for Title V funding are strongly urged to take advantage of this training opportunity and send key community leaders to the initial training. A subsequent three day workshop will be held for planning teams from local Prevention Policy Boards to complete a risk and resource assessment. OJJDP has advised the State agencies on the process for units of general local government to participate in this training.

3. Local Three-Year Delinquency Prevention Plan

Each unit of general local government's application to the State agency must include a three-year plan describing the extent of risk factors identified in the community and how these risk factors will be addressed. A written explanation of the risk factors and protective factors can be obtained from the State agency grantee. The plan must, at a minimum, contain the following elements:

a. The designation or formation of a local Prevention Policy Board (PPB) consisting of no fewer than 15 and no more than 21 members from the community, representing a balance of public agencies, private nonprofit organizations serving children, youth, and families, and business and industry. Such agencies and organizations may include education, health and mental health, juvenile justice, child welfare,

employment, parent, family, and youth associations, law enforcement, religion, recreation, child protective services, public defenders, prosecutors, and private manufacturing and service sectors. The applicant should also assure that the PPB, to the extent possible, contains one or more members under the age of twenty-one, one or more parents or guardians with children who have had contact or are at risk of having contact with the juvenile justice system, and an overall membership that generally reflects the racial, ethnic, and cultural composition of the community's youth population. A specific local agency or entity must have responsibility for support of the PPB;

b. Evidence of commitment of key community leaders to supporting a comprehensive, delinquency prevention effort. Key leaders may include public and private individuals in key leadership and policy positions who are instrumental in effecting policy changes, controlling resources, and mobilizing the community;

c. Definition of the boundaries of the program's neighborhood or community;

d. An assessment of the readiness of the community or neighborhood to adopt a comprehensive delinquency prevention strategy;

e. An assessment of the prevalence of specific, identified delinquency risk factors in the community, including the establishment of baseline data for the risk factors. The assessment of risk factors must result in a list of priority risk factors to be addressed, as determined and approved by the PPB;

f. Identification of available resources and promising approaches, including Federal, State, local, and private, and a description of how they address identified risk factors, and an assessment of gaps in needed resources and a description of how to address them;

g. A strategy, including goals, objectives, and a timetable, for mobilizing the community to assume responsibility for delinquency prevention. This should include ways of involving the private nonprofit and business sectors in delinquency prevention activities;

h. A strategy, including goals, objectives, and a timetable, for obtaining and coordinating identified resources which will implement the promising approaches that address the priority risk factors. This strategy must include a plan for the coordination of services for at-risk youth and their families;

i. A description of how awarded funds and matching resources will be used to accomplish stated goals and objectives by purchasing of services and goods and leveraging other resources. This should include a budget which lists planned expenditures;

j. A description of how the PPB will provide general oversight for developing the plan, approve the plan prior to submission to the State, and make recommendations to the responsible local agency for the distribution of funds and evaluation of funded activities;

k. A plan for collecting data for the measurement of performance and outcome of project activities.

Priority Consideration for Funding

Only local government applicants certified by the State Advisory Group as in compliance with the mandates of the Act, that have convened a PPB, and have submitted a three year plan will be eligible for funding. In considering applications for funding, State Advisory Groups will give priority to eligible applicants which:

a. Provide a thorough assessment of risk factors and resources, including the quantified measurement of the risk factors which will serve as the baseline for determining project performance and outcome;

b. Identify key community leaders and members of the PPB, describe their roles in the comprehensive delinquency prevention strategy, and provide evidence of key community leaders support;

c. Clearly define the boundaries of the program's neighborhood or community;

d. Provide a realistic assessment, including evidence, of the readiness of the community or neighborhood to adopt a comprehensive delinquency prevention strategy;

e. Provide a coherent plan, including realistic goals and objectives, to mobilize the community and implement a strategy that will address priority risk factors, including innovative ways of involving the private nonprofit and business sectors in delinquency prevention activities;

f. Provide specific strategies for service and agency coordination, including collocation of services at sites readily accessible to children and families in need;

g. Provide a strategy for or evidence of collaborating with other units of local of government and State agencies to develop or enhance a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention;

h. Provide a budget outlining the planned expenditures of grant funds and matching resources, including a budget narrative justifying these expenditures;

i. Provide a sound plan for collecting data for measuring performance and outcome;

j. Provide written statements of commitment from State or local public agencies to match in cash or kind, at least 50% of the funds awarded.

Local Application Deadline

The State Advisory Group will determine the application deadline. However, all local subgrant awards should be made within 180 days after the date that the State agency was awarded Title V funds.

Local Grant Administrative Requirements

After receipt of the award, local grantees will provide all required reports and data to the State agency, describing implementation of the program. Technical assistance for program implementation will be available upon request through the State agency.

Evaluation

OJJDP will collect and analyze data collected by each grantee for the purpose of developing national summary reports on the performance and outcome of the local prevention efforts. This evaluation will examine performance in meeting stated objectives as well as the outcome of the project's activities. In order for this evaluation to be meaningful, it is essential that, to the greatest extent possible, the local three year comprehensive delinquency prevention plans contain quantified objectives and baseline measurements of the identified risk factors.

Allocation of Title V Funds to States

The Title V Delinquency Prevention Program has a F.Y. 1994 appropriation of $13 million available for awards to States to support programs of units of general local government. Allocations are available to States based on the number of juveniles in the State who are subject to original juvenile court delinquency jurisdiction based on State law, with a minimum allocation of $75,000 for States and the District of Columbia and $25,000 for Territories and Possessions. A list of the allocations for States is available from OJJDP. The allocations for States not participating in this program in F.Y. 1994, or subsequent years, will be withheld for use in F.Y. 1995, or subsequent years, pursuant to the Title V Delinquency Prevention Program guidelines issued for that year.

Size of Awards to Units of General Local Government

The size of the award to each unit of general local government, or combination thereof, and the total number of awards will be determined by the State Advisory Group, based upon the amount of funds allocated to the State and the quality of the local three-year prevention plans.

Duration of Grants and Continuation Funding

OJJDP will award grants to States for a project period beginning on the date of award and ending on September 30, 1996. States will award grants to units of general local government in annual increments covering not more than 12 months each, with overall project periods of 12 to 36 months. Subsequent years' funding will be contingent upon satisfactory performance and the availability of funds. Future funding is dependent upon Congressional action.

Restrictions on Uses of Funds: Title V funds cannot be used for construction, land acquisition, or supplantation of Federal, State, or local funds supporting existing programs or activities.

Responses to Public Comments

Twenty-seven comments to the proposed guideline were received. A summary of the comments and OJJDP's responses follow. In many instances, the summary comments listed below incorporate specific comments from more than one respondent.

Comment. The guideline appears to focus on risk factors and reducing delinquency without providing adequate emphasis to protective factors and positive youth outcomes. A prevention approach which is protection focused or risk and protection focused seems more in line with OJJDP's strategy.

Response. The structure of the Title V program is based on identifying risk factors that can lead to the development of delinquency and violence in children and youth, and developing strategies to eliminate or ameliorate the risk factors. A key component of this strategy is to provide the protective factors which serve to buffer children and youth from the damaging effects of risk factors.

To better express this strategy, the Title V program will be referred to as a risk and protection focused strategy.

Comment. The guideline should refer to children and youth, and emphasis should go to youth eleven years and older, since this population most often lacks positive alternatives in their communities.

What age is the program targeting? Would programs for parenting skills and early infant bonding be appropriate? The program needs to place more emphasis on parental responsibility and skills training.

Response. The guideline states that "the program seeks to address these (risk) factors at the earliest appropriate stage in each child's development." The Title V program is structured to accommodate what each individual community has identified as the best strategy to reduce risk factors and increase protective factors. For some communities this may require emphasizing the ages of zero to three, for others it may mean eleven years and older, and in others it may require a focus on adolescents.

Comment. The clear thrust of the proposed guideline is toward primary prevention. Given the increasing emphasis on primary and secondary prevention in funding proposals now before Congress, OJJDP should make clear in the final guideline that in communities where the greatest need is for tertiary program, those communities are also encouraged to apply for these funds.

Response. OJJDP formulated the Title V program based on a risk and protection focused strategy. This decision was based on OJJDP's research and demonstration program experience, as well as the provisions of Title V. While the risk and protection focused strategy stresses secondary prevention, the comprehensive planning process employed by communities may also yield tertiary and primary prevention programs.

The three levels of prevention (primary, secondary, and tertiary) usually overlap to some degree, especially in a risk and protection focused strategy such as that employed in the Title V program. The risk and protection focus of the strategy analyzes and addresses the root causes of problem behavior and violence which can affect all children (primary prevention), including those who have been identified as at-risk (secondary prevention), and those who have committed offenses and have been referred to the juvenile justice system (tertiary prevention).

Section 505(a) under Title V states that grants may be used for "delinquency prevention programs and activities for youth who have had or are likely to have contact with the juvenile justice system, including the provision to children, youth and families of: (1) Recreation services; (2) tutoring and remedial education; (3) assistance in the development of work skills; (4) child and adolescent health and mental health services; (5) alcohol and substance abuse prevention services; (6) leadership development activities; and (7) the teaching that people are and should be held accountable for their actions." Information and technical assistance on these and other prevention programs and strategies are available from OJJDP.

Comment. Gender-specific services should be part of every community's comprehensive strategy.

Response. Through the risk and resource assessment, each community will have an opportunity to analyze service gaps and address those gaps with programs and strategies which have had positive or promising results. OJJDP is making technical assistance and training available to States and localities who would like to enhance their assessment skills in analyzing service gaps.

Comment. The guideline should list attention deficit disorder and lack of support for parents with children with disabilities as risk factors.

Response. The risk factors cited in the training that OJJDP is providing for potential Title V applicants includes three school related factors: Early and Persistent Antisocial Behavior, Academic Failure in Elementary School, and Lack of Commitment to School. Learning disabilities can be related to each of these risk factors.

Comment. A sixth program objective should be added which focuses on methodology. This would provide a basis for improving professional practice within and among the organizations working with youth.

Response. Although the guideline does not require a specific methodology for planning or programming, it does provide general guidance on methodology along the lines of a risk and protection focused strategy. The training and technical assistance that is available through OJJDP provides a means of improving professional practice.

Comment. Will private non-profit agencies have difficulty in being subgranted funds if a local unit of government does not wish to apply but does wish to participate?

Response. Section 505(a) under Title V of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) authorizes the Administrator to "make grants to a State, to be transmitted through the State Advisory Group, to units of general local government * * *" The only means by which private non-profit organizations can receive Title V funds would be through service contracts with units of general local government.

Comment. Are school districts eligible to apply for Title V funds?

Response. Section 503 of the JJDP Act provides for only units of general local government to be the applicants for Title V funds. A school district is not a unit of general local government.

The proposed guideline did not consistently use the term "unit of general local government." The final guideline is amended to use this term consistently.

Comment. The guideline appears to grant sole authority to award grants to the State Advisory Group. How will the awards be made if State statute does not grant the State Advisory Group such authority? If the Governor signs the grant, must the State Advisory Group approve the award?

Response. The guideline, under "State Grantee Qualifications," has been revised to require the State agency applicant to provide an assurance that the State Advisory Group has the sole authority, consistent with State law or policy, to approve or recommend the award of Title V subgrants.

Comment. Can private not-for-profit organizations participate in public-private partnerships with operational prevention coalitions?

Response. Under the Title V program, a unit of general local government could vest a public-private organization with significant responsibility for implementation of the program. However, the local government would still be responsible to the State for administering any Title V funds.

Comment. Municipalities with populations in excess of 3 million should be eligible to receive grants directly from OJJDP.

Response. Section 505 of the JJDP Act authorizes the Administrator to "make grants to a State, to be transmitted through the State Advisory Group to units of general local government."

Comment. The formula for allocating funds to States should be amended to include all youth up to 18 years of age, regardless of the maximum age of original juvenile court delinquency jurisdiction.

Response. Because a community can only prevent delinquency in a juvenile who is subject to a juvenile court's delinquency jurisdiction, the most logical and appropriate means for allocating Title V funds is to use a formula determined by each State's relative population of youth below the age limit for original juvenile court delinquency jurisdiction.

Comment. Regional plans for Title V should be permitted.

Response. The guideline allows for combinations of units of general local government to apply for Title V funds. However, the regional plan which is the product by such a regional collaboration must define the boundaries of the target neighborhoods or communities.

Comment. States will be implementing the Title V program using varying timetables and strategies. OJJDP should require the States' applications to include a time-task plan.

Response. This requirement has been added Under "Application Requirements for State Agencies," in the guideline.

Comment. Four respondents indicated that the match requirement was too onerous for small communities and private nonprofit organizations. The respondents recommended that a reduced level of match be allowed.

Response. Title V requires that "the unit or State has agreed to provide a 50% match of the amount of the grant, including the value of in-kind contributions, to fund the activity." (Section 505(b)(7)).

This provision provides some flexibility in the match requirement. First, the match, which is 50 cents on the dollar, has to be made for every dollar granted to the local level. However, the State can provide a portion of the funding through State program dollars. Second, the match can be made in cash or in-kind. In-kind match is discussed in a separate response.

It should be noted that the Title V provision does not require a match from any agency other than the State or the unit of general local government. It is the responsibility of the unit of general local government to provide the match, not nonprofit service providers.

Comment. Two respondents recommended that in certain instances, the match requirement should exclude in-kind match and require a cash match only.

Response. Congress intended the in-kind match provision to allow flexibility in providing local resources. Although the in-kind match provision may require more diligence on the part of the State in assuring that the match requirement is met, the State cannot restrict the match to cash because this is a benefit provided to local recipients by statute.

Comment. The guideline should require that local applications provide formal interagency agreements which promote "contractual" agreements vs. "intentional" agreements.

Response. The guideline allows for statements of commitment in order to give the State flexibility in determining what form those statements of commitment should take. Given the timeframes for the planning process in the guideline, it may not be possible for a locality to obtain formal interagency agreements prior to submission of the plan.

Comment. Can the State Advisory Group limit the availability of funds to a specific local government or a specific set of risk factors?

Response. The State Advisory Group and State agency may issue funding guidelines which focus available funds on areas with the greatest need. If a State chooses this approach, the award of funds is to still be determined through a competitive process that solicits proposals from areas which meet criteria established by the State Advisory Group. It is possible that these criteria may result in a limited number of units of general local government being eligible to apply.

In targeting communities with particular needs for purposes of soliciting proposals, the State Advisory Group may include specific risk factors in the targeting criteria. However, applicants must still analyze the incidence of all risk factors in their local comprehensive plans.

The State Advisory Group and the State agency may not limit the competition based solely on criteria which are not related to juvenile crime or other indications of need. For example, the State Advisory Group may not limit competition to particular communities based solely on population size. To do so would result in the arbitrary exclusion of communities from competition in the Title V program. The guideline is revised under "Local Subgrantee Qualifications" to reflect this requirement.

Comment. The timeframes allowed in the guideline for the development of local comprehensive plans are too restrictive, especially if a locality does not have any available planning resources. What happens if a local applicant cannot meet the 180 day deadline? OJJDP should allow States to award the first and second year of Title V funds through one RFP process after the new Federal fiscal year.

Response. The guideline states that "all subgrant awards should be made within 180 days after receipt of the award from OJJDP." OJJDP intends this 180 day timeframe to serve as a target date, particularly in States where localities are developing their Title V prevention plans on a base previously established through other risk-focused prevention planning efforts. OJJDP recognizes that some States and localities are new to prevention planning, and more time will be required to develop comprehensive three year plans. OJJDP is providing

technical assistance and training to States and localities to enhance their ability to implement the Title V program in the most expeditious manner possible without sacrificing quality.

Comment. The guideline suggests that Title V funds should be used in conjunction with the JJDP Act Formula Grant funds. The time frame for these two planning cycles do not coincide.

Response. Title V requires three year local plans and the Formula Grant requires three year State plans. OJJDP encourages the State Advisory Groups and State agencies to develop a mechanism whereby the local plans can be integrated in the State plan.

The proposed guideline, under "Duration of Grants and Continuation Funding" has been revised to more accurately describe the grant award process by providing that "OJJDP will award grants to States for a project period beginning on the date of award and ending on September 30, 1996. States will award grants to units of general local government in annual increments covering not more than 12 months each, with overall project periods of 12 to 36 months."

Comment. Will Title V funds be available in to States in future years?

Response. OJJDP will make future years' Title V funds available to States and localities through the process described in the guideline, pending satisfactory performance and availability of funds. OJJDP will determine satisfactory performance of State grantees and the States will determine satisfactory performance of local grantees.

Comment. The Title V program should be coordinated with other similar Federal programs, such as the Family Preservation Act.

The guideline should require local applicants to document collaboration with other Federal programs.

Response. OJJDP strongly encourages coordination with other Federal, State and local programs. OJJDP is working with the U.S. Department of Health and Human Services to establish mechanisms to facilitate coordination with the Family Preservation and Support Services provision and other programs which use a community coalition planning approach to prevention. In addition, OJJDP will provide technical assistance and training to States and localities on accessing and collaborating with other Federal programs.

The guideline indicates that a "key component of the prevention approach is the coordination and use of existing resources." The guideline encourages applicants to coordinate this effort with other Federally funded programs.

Comment. Who signs the local application? The highest elected local official?

Response. The local application may be signed by any official authorized to do so by the applicant unit of general local government.

Comment. Can a county, and municipalities within a county, both be eligible to apply?

Response. Yes, provided that funding is contingent upon coordination of the respective plans.

Comment. Can Title II, Part B Formula Grant funds be used to help localities develop local plans?

Response. Yes. The use of Formula Grant program funds for the development of local delinquency prevention plans is a permissible expenditure of these funds.

Comment. What if a local plan is missing one of the required elements?

Response. The local plan must contain all the required elements listed in the guideline before the locality can receive Title V funds.

Comment. It is not clear whether the funds can be used for service delivery or planning.

Response. Title V funds are used for service delivery.

Comment. The guideline refers to the "Communities that Care" model of risk-focused prevention. Can grant recipients employ other risk-focused prevention models?

Response. Yes. Localities may base their three year plan and strategy on other delinquency prevention models, provided that they are based on a risk and protection focused model that uses: (1) The analysis of risk factors which are grounded in sound theory and positive research results, and (2) protective factors which have a sound theoretical basis and positive or promising research results.

OJJDP is offering training and TA on risk and protection focused prevention which permits States and localities to use any risk and protection focused model.

Comment. We interpret the Title V audit requirements to be different than that of an A–128 audit.

Response. The provisions of OMB Circulars A–128 and A–133 apply to Title V funds.

Comment. The guideline indicates project periods for local grants of 12 to 36 months. It may be beneficial to allow for up to a 60 month project period to facilitate the measurement of outcomes of the projects.

Response. Title V is designed as a long term program. Based on the experience of communities that are implementing prevention programs of similar design, we anticipate that three to five years is not an unreasonable time to expect a community coalition, such as the Title V Prevention Policy Board, to establish itself as a viable organization with the influence necessary to help effect system change.

In the proposed guideline, OJJDP has provided a 12–36 month timeframe to provide flexibility for accommodating a wide range of community planning and coalition building experience by local Title V grant recipients. Some communities may only need a one year period to augment on-going risk focused prevention activities. For other communities, this may be their first attempt at this type of comprehensive prevention planning and programs. In addition, this timeframe will facilitate integrating the planning for Title V with that of the Formula Grants program.

In general, the use of Title V funds is intended to provide an incentive to plan and implement delinquency prevention programs at the local level. States may wish to provide competitive Title II funding for local prevention programs following Title V funding, and local grantees can seek funds for expansion from a range of State, Federal, and foundation sources.

The guideline requires the collection of performance and outcome data. OJJDP encourages States and local grantees to continue collecting this data for their prevention programs to measure outcomes beyond the period of Title V funding. OJJDP is also planning to continue collecting and analyzing data for selected jurisdictions through an on-going national evaluation of Title V.

Comment. Funding formulas have favored urban over suburban communities. The opportunity for equal programming throughout the State would be most desirable or at least a funding formula created that allows suburban communities to compete with like communities.

Response. Under the guideline, States have the discretion to target those communities in the State with the greatest need. The judgment the State Advisory Group can best determine whether to limit the competition for the grants to specific, targeted communities or to conduct a statewide competition. Given the limited amount of Title V funds available to each State and the local competition requirements, distribution of funds based on a population formula would not be feasible. The State Advisory Group and State agency could, however, conduct competitions among applicants of

specific types of geographic areas (urban, suburban, rural).

Comment. The guidelines should specifically prohibit or discourage the withdrawal of community funds from agencies to provide the match for Title V programs, especially in cases where collaborative efforts between agencies and government would serve the same purpose and clients.

Response. The guideline prohibits using Title V funds to supplant Federal, State, or local funds supporting existing programs. The guideline encourages collaboration of agencies and services. The planning process for Title V is designed to produce a more effective, efficient and responsive service system for children, youth and families. The locality can best determine how to design, coordinate, and fund programs to achieve this outcome, provided that the Title V funds are not used to replace funds for existing programs.

Comment. The guideline requires a great deal of local planning before localities can become eligible for funding. This provides little incentive for many units of general local government to engage in such efforts without a strong probability of being funded.

In order to reduce the burden on the local communities, a process for awards should be employed wherein communities first apply to the State Advisory Group, and then develop their plans after there is a much greater chance of being funded.

Another option would be for OJJDP to mandate that localities should build upon existing plans, where they exist.

Response. During the initial implementation of the Title V program, some localities will have the experience to initiate and develop a three year plan in a short timeframe. In order to establish effectively operating programs during this first year, State Advisory Groups may want to consider giving priority to applicant communities that have the capacity to develop strong plans. For instance, a State Advisory Group may target communities that already have planning boards involved in broad-based prevention planning.

OJJDP encourages localities to build upon existing prevention plans which are based on a risk and protection factor approach.

Comment. OJJDP should encourage or mandate that whenever possible, localities must designate existing coalitions or boards, with prevention responsibilities similar to those required by Title V, as the Prevention Policy Board.

It may be difficult to convene a representative Prevention Policy Board of not more than 21 members. Can the Prevention Policy Board exceed 21 members?

Response. The guideline requires the local applicants to designate or form a Prevention Policy Board. OJJDP encourages the use of existing similar boards to meet the Title V requirements. This would facilitate coordination of funding sources and collaboration among agencies and governments.

Title V expressly requires that the board membership consist of not less than 15 and not more than 21 members. Localities may convene boards of more than 21 members for broad-based prevention planning, but recommendations and other actions regarding the Title V three year plan and funds can only be made by a specified board (or committee of a larger board) comprised of 15 to 21 members.

Comment. Six respondents indicated that specified groups of people need to be represented on Prevention Policy Boards including youth, families with or parents of children in the system or at risk (consumers of prevention services), and members that reflect the racial, ethnic and gender composition of the community's youth population.

Response. The additional representation described by these six respondents furthers the goal of having representative local boards. However, overly prescriptive Board requirements reduce local flexibility, particularly in the use of existing planning bodies. Therefore, OJJDP has modified the guideline to encourage the inclusion of these interests on the Prevention Policy Boards, to the maximum extent possible.

Comment. Youth development organizations should be included in the planning process and considered as a primary existing resource for prevention services—they have extensive experience in primary prevention programs.

Response. All human services agencies that in any way deal with children, youth, and families, including youth development organizations, should be involved in the planning process and considered as resources to assist in implementation of the local prevention plan. Technical assistance to States and localities is available through OJJDP to help in identifying and accessing prevention resources, including youth development organizations.

Comment. Can a Prevention Policy Board consisting of a private nonprofit organization and a local government apply for grant funds? If allowable, must the local government administer the funds?

Response. Prevention Policy Boards are not eligible to apply for a Title V grants from the States. Only units of general local government are eligible.

A private nonprofit organization and a unit of general local government could enter into a partnership to implement the Title V program, provided that the unit of general local government is the applicant and all Federal fund administrative requirements are met.

Comment. The exact duties of the Prevention Policy Board are not clear. The Board should be charged with the development of the local prevention plan.

Response. One purpose of the Board is to provide a vehicle for community commitment to and involvement in making the community a healthy place for the development of children and youth. Involving the Board in the development of the plan is one way of gaining that commitment and involvement.

The guideline has been amended to require a description of how the Prevention Policy Board will provide general oversight for developing the plan, approve the plan prior to submission to the State, and make recommendations to the responsible local agency for the distribution of funds and evaluation of funded activities.

Each Prevention Policy Board is encouraged to develop by-laws in concert with the responsible local agency to define its duties and how it will operate. Technical assistance is available through OJJDP for Board development.

Comment. The Prevention Policy Board should be charged with the mission of producing positive outcomes for youth, not just delinquency prevention.

Response. OJJDP is promoting risk and protection focused delinquency prevention as a promising strategy for the Prevention Policy Board to use in addressing the complex and varied sources of delinquent behavior in children and producing positive outcomes for youth.

Comment. Will OJJDP provide application kits for States?

Response. A sample State application is available from OJJDP.

Comment. The training on risk focused prevention is an excellent idea. However, given the limited resources available to localities to travel to the training, the training should be targeted on the localities which have been selected to receive grants. Also, a training for trainers would develop in-state capacity to deliver training in a more cost-effective manner. The use of

teleconference training should also be considered.

Response. The purpose of the training is to introduce key community leaders to risk and protection focused prevention, and enhance the localities knowledge and skills in prevention planning. Planning must occur before grants are awarded.

OJJDP hopes to provide training for State training teams in fiscal year 1995. OJJDP is also examining the use of teleconferencing as a vehicle for the more efficient delivery of training.

Comment. OJJDP should take an aggressive stance on the delivery of technical assistance.

Response. OJJDP is developing a capacity, through its Part B technical assistance contract, to provide technical assistance to every community which is developing or implementing a delinquency prevention plan.

Comment. What is the role of the State Advisory Groups in implementing the Title V program?

Response. The role of the State Advisory Group is to establish program eligibility criteria, establish procedures for submission and review of local applications, and approve or recommend approval of Title V subgrant awards.

Comment. OJJDP should provide examples of prevention plans which meet the OJJDP requirements.

Response. OJJDP is making resource material on prevention, including sample plans, available through the Juvenile Justice Clearinghouse, 1600 Research Boulevard, Rockville, MD 20850, Telephone (800) 638–8736.

Comment. If a prevention project serves a specific service catchment area within the boundaries of a unit of general local government, is the compliance certification limited only to the catchment area or the entire area within the boundaries of the unit of general local government? Is certification limited to only those facilities operated by the local government, exclusive of facilities located within the boundaries of the local government but operated by other governments?

Response. In order to be eligible to receive Title V funds, a unit of general local government must be certified by the State Advisory Group as in compliance with the JJDP Act mandates. The compliance certification applies to all facilities operated or contracted by the unit of general local government. The certification is not limited to a specific catchment area within the boundaries of the unit of general local government. Likewise, the certification must also include any facilities that the unit of general local government operates, contracts for, or uses inside or outside its boundaries. However, the certification does not apply to facilities operated or controlled by other governmental units within the local governmental boundaries that are not used by the local government.

Comment. Compliance with the Disproportionate Minority Confinement mandate is difficult to assess since it is just beginning to unfold in many jurisdictions.

The guidelines need to specify how the State Advisory Group's should certify unit of general local government compliance with the Disproportionate Minority Confinement where the Phase II Study has yet to be completed.

Response. The inclusion in Title V of the provision requiring local compliance with the mandates reflects an intent to use Title V funds as an inducement to bring localities into compliance. The State Advisory Groups and the State agencies should use this provision to gain the cooperation and commitment of units of general local government to assess and address disproportionate minority confinement. To certify a unit of general local government on disproportionate minority confinement compliance, the State Advisory Group must determine that the level of cooperation and commitment is satisfactory to support efforts to achieve the goals of the disproportionate minority confinement provision.

Comment. The certification of compliance with the mandates should occur at the time the subgrantee application is submitted.

Response. The guideline requires that units of general local government must obtain a certification prior to applying for an award of funds. This requirement is intended to eliminate a local government developing a three year comprehensive plan as the basis for an application for a grant which the locality is ineligible to receive.

Comment. In States where the compliance monitoring data is generated by county-wide reporting, the State Advisory Groups should be allowed to certify a city's compliance based on the overall compliance status of the county.

Response. Section 505 of the JJDP Act requires that in order for a unit of general local government to be eligible to receive a grant of Title V funds, the unit must be "in compliance with the requirements of part B of Title II." OJJDP has interpreted this to mean that the unit of general local government which is seeking eligibility to apply for an award of Title V funds must be in compliance with the four "mandates" of part B of Title II. Thus, a city's eligibility must be determined by the compliance data relevant to that city.

Comment. The language under the heading "Local Subgrantee Qualifications" is unclear. It appears to say that all units of general local government must be certified by the State Advisory Group to be in compliance with the mandates of the JJDP Act.

Response. The guideline does not require the State Advisory Group to certify all units of general local government, only those that wish to apply for Title V funds.

Comment. Is it up to each State to define "at-risk?"

Response. The guideline states that "the target population is all at-risk children in a given community." The Title V program is based on analyzing and addressing research-based risk factors which are identified in target communities. All children and youth who are exposed to these identified risk factors are the target population. In many cases, this would mean all children and youth in a target community would be considered at-risk.

Comment. Define in-kind match, and identify what type of in-kind match is allowed.

Response. In-kind match is determined by the value of goods and services received and used in the program that do not have a money cost to the grantee. In-kind match may be provided by the grantee or donated by a third party, such as a volunteer or a public or private agency. For example, the value of the time donated by a recreational counselor who is not an employee of the grantee could be counted as in-kind match. Likewise, the value of office space or equipment donated by a private corporation could also be counted as in-kind match. Note that the value of the time of an employee of the grantee who is not being compensated by grant funds, but is providing service to the project funded by the grant, would be counted as cash match.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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August 1, 1994

Part IX

Department of the Interior

Office of the Secretary
43 CFR Part 39

Bureau of Land Management
43 CFR Part 2820

National Park Service
36 CFR Part 14

Fish and Wildlife Service
50 CFR Part 29

Revised Statute 2477, Rights-of-Way; Proposed Rules

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 39

RIN 1090–AA44

Revised Statute 2477 Rights-of-Way

AGENCIES: Bureau of Land Management, National Park Service, Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Secretary of the Interior's June 1, 1993, recommendation to Congress that the Department of the Interior (Department) promulgate regulations addressing rights-of-way pursuant to Revised Statute (R.S.) 2477 across lands now administered by the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service. R.S. 2477—a provision adopted by Congress in 1866 that granted a right-of-way for the construction of highways across public land not reserved for public uses—was repealed in 1976, but valid existing rights-of-way were not terminated.

There is not currently in place any formal administrative process by which those who claim R.S. 2477 rights-of-way can have the Department make binding determinations of their existence and validity. Furthermore, inconsistent court interpretations and incomplete guidance from the Department over the years have done little to elucidate the nature of the rights acquired. This proposed rule is intended to clarify the meaning of the statute and provide a workable administrative process and standards for recognizing valid claims.

DATES: Comments must be submitted in writing by September 30, 1994. Comments received after this date may not be considered in the decision-making process on the issuance of the final rule.

ADDRESSES: Comments on these proposed regulations should be sent to: U.S. Department of the Interior, Main Interior Building, 1849 C Street, N.W., room 5555, Washington, DC 20240. All comments received will be available for public review in room 5555 at the above address between the hours of 7:45 a.m. to 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management: Ron Montagna, (202) 452–7782, or Ted D. Stephenson, (801) 539–4100. National Park Service: Dennis Burnett, (202) 208–7675. U.S. Fish and Wildlife Service: Duncan Brown, (703) 358–1744.

SUPPLEMENTARY INFORMATION:

Background

R.S. 2477 states simply: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." Originally, the grant was Section 8 of "An Act Granting Right of Way To Ditch and Canal Owners Over The Public Lands, and For Other Purposes," also known as the Mining Act of 1866. In 1873 Section 8 was codified as Section 2477 of the Revised Statutes, hence the reference as R.S. 2477. In 1938 the statute was recodified as 43 U.S.C. 932. On October 21, 1976, R.S. 2477 was repealed by the Federal Land Policy and Management Act of 1976 (FLPMA). Public Law 94–579, Section 706(a), 90 Stat. 2744, 2793 (1976). FLPMA did not terminate valid rights-of-way existing on the date of its approval. Section 509(a), 90 Stat. 2781, 43 U.S.C. 1769; Section 701(a), 90 Stat. 2786, 43 U.S.C. 1701 note.

Although this more than a century-and-a-quarter-old provision was repealed nearly 18 years ago, interpreting it today remains important, because valid rights-of-way existing at repeal were not terminated. In recent years, there has been growing controversy, concentrated in two Western States, over whether specific claimed access routes ought to be considered "highways" that were "constructed" pursuant to R.S. 2477, and if so, the extent of the rights thus obtained. This controversy stems in large part from the lack of specificity in the statutory language, which has helped create unrealistic expectations in interested local and State governments, environmental and wilderness protection groups, and other Federal land users. In addition, the language of R.S. 2477 causes uncertainty and potential conflict for Federal land managers charged with managing and protecting Federal lands according to current environmental and land use laws.

For several years both Congress and the Department have given attention to the problems posed by R.S. 2477. Most recently, in the *Conference Report on the Fiscal Year 1993 Appropriations Bill for Interior and Related Agencies* (September 24, 1992), Congress directed the Department of the Interior to study the history, impacts, status, and alternatives to R.S. 2477 and to prepare a report that provided sound recommendations for assessing the validity of claims. On June 1, 1993, the Secretary of the Interior submitted to Congress the *United States Department of the Interior Report to Congress on R.S. 2477: The History and Management of R.S. 2477 Rights-of-Way Claims on Federal and Other Lands (Report)*. In the *Report*, the Secretary informed Congress that the Department of the Interior (DOI) would promulgate regulations to address these ongoing concerns.

During preparation of the *Report*, the Department obtained public participation in two stages. Preliminary scoping meetings were held in December 1992 and January 1993 in eight western cities. Over 4,000 pages of public comments were received and reviewed. These comments were instrumental in preparing a March 1993 draft of the *Report*, which was circulated to approximately 4,000 interested parties. Seven additional public meetings were held to solicit comments on the draft. Approximately 1,000 pages of further comments were provided to the Department. All public input received in this process was considered in preparation of this proposed rule.

Need for the Regulations

Thousands of miles of highways have been constructed across the public domain, including many existing State and county highways in the Western United States, under the authorization of R.S. 2477 and similar provisions. Rights-of-way validly acquired pursuant to R.S. 2477 are historic and important means of access to and across Federal lands for local citizens, recreationists, and Federal land managers performing official duties.

Historically, these rights-of-way have not presented many problems to land managers, because in general their existence is obvious and unquestioned. However, in some locales in recent years, competing ideas about the purposes for which Federal lands should be managed have mirrored competing interpretations of what the R.S. 2477 statute granted. Some State and county governments, intent on maintaining a road infrastructure for their citizens and providing for economic development, have turned to R.S. 2477 as a guarantee of access across and to Federal lands, believing it to provide simpler and less restrictive access than other Federal laws. There are some proponents of unlimited and unregulated access to Federal lands who view R.S. 2477 as a mechanism on which they believe they can rely to circumvent the protective requirements of current environmental and land use law and to authorize the present expansion of footpaths and animal trails into highways. Some environmental groups view R.S. 2477 with alarm, believing it to have been resurrected so

long after its repeal as a weapon to defeat the designation of existing and potential wilderness areas (which are roadless by definition). These widely varying views have created controversy and exacerbated management problems for both holders of the rights-of-way and Federal land managers.

In the current situation, it is difficult for Federal land managers, local governments, and public land users to know which right-of-way claims are valid and where they lie. These proposed regulations are intended to clarify the provision in its historic context and to provide a formal administrative process—as an alternative to potentially expensive and lengthy judicial proceedings—by which validly acquired rights-of-way will be recognized and regulated.

R.S. 2477 has been the subject of inconsistent interpretations. The statutory terms "highway," "construction," and "public lands not reserved for public uses" have not been defined completely or consistently, resulting in uncertainty for all parties about the exact nature and extent of the grant. In the absence of uniform Federal guidance, court decisions—sometimes applying widely varying State laws—have also failed to provide consistent or complete interpretations. Some recent State laws, including some adopted after the repeal of R.S. 2477, employ overly broad definitions or are otherwise inconsistent with the statutory requirements.

Federal land managers need consistent, coherent guidance on how to apply this provision and how to manage its potential conflicts with other existing laws. State and local governments and public land users need greater certainty. This proposed rule would clarify the legal meaning of these terms so that validly acquired rights-of-way can be recognized and regulated consistently and fairly.

In most cases, records do not exist documenting the existence of rights-of-way. Highways constructed pursuant to R.S.2477 did not require any specific, formal approval from the Federal government, so they were not generally recorded on the public land records. A Federal regulation published in 1980 requested claim holders to notify the Bureau of Land Management (BLM) of the existence of claims, but it also expressly said that the filing or failing to file a claim would have no legal effect. 43 CFR 2802.5(b) (1980). The response elicited by this request was therefore incomplete.

This uncertainty can cloud the title of Federal, State, local, private, and Indian or Alaska Native lands with possible unrecorded restrictions and interfere with the ability of property owners and land managers to manage or plan for uses of the land. The uncertainty also leaves claimants with undefined and unrecorded rights and the potential for confusion in trying to use or enforce those rights.

The ability of Federal agencies to meet their statutory obligations is compromised if claims are not identified with finality. For example, land use planning to provide for orderly and responsible decisionmaking on Federal lands is adversely affected if previously unnoticed or unused R.S. 2477 rights-of-way can be claimed for an indefinite period. Federal land managing agencies are required by existing laws to prepare long-term land use planning documents that identify and analyze the condition of the land, current and future uses, current and future environmental protection measures, and other measures to establish an appropriate management scheme. Preparation of these land use plans, whether they are General Management Plans prepared for each unit of the National Park Service or Resource Management Plans prepared for BLM lands, is a lengthy, complex process designed to meet existing legal requirements, the needs of the public, and the resource.

This rule intends to establish a process to determine which claims to rights-of-way were validly acquired, by requiring the filing of a claim within specified time periods. Besides offering a way to have rights validated without pursuing court actions, finalizing claims within a set time period will give claimants more security, because as time passes it will become increasingly difficult to determine which rights-of-way were validly acquired. After the locations of claimed rights-of-way are known, Federal land managing agencies will be better able to plan for and manage the Federal lands.

R.S. 2477 and Other Means of Access to and Across Federal Lands

Although R.S. 2477 was repealed in 1976, other methods exist of obtaining access to or across Federal lands. There are, in fact, several provisions and means of obtaining access across Federal lands other than R.S. 2477. If a right-of-way under R.S. 2477 is determined not to exist, or to be limited in scope, access may still be obtained under, and consistent with, these other laws allowing access.

Most access across public lands is accomplished informally under the privilege of casual use (defined at 43 CFR part 2800), without the necessity of special permission. Refuge and park visitors or public land users travel under the terms of casual use or other implied rights that do not require a right-of-way permit or other authorization.

Reasonable access is generally made available to persons engaged in valid uses of the public lands such as mining claims, mineral leasing, livestock grazing, and others. Provisions of the Alaska National Interest Lands Conservation Act (ANILCA) provide for reasonable access across Federal lands to inholdings including those within National Forests and within blocks of public land managed by BLM.

Rights-of-way for roads or other access can be applied for under several other provisions of existing Federal law such as Title V of FLPMA. Access is sometimes obtained also through reciprocal road agreements between a Federal agency and parties seeking access across Federal land. This authority is found at 43 CFR 2801.1–2.

For rights-of-way in Alaska, Congress has provided certain special provisions. These include public easements across selected Native corporation lands pursuant to Section 17(b) of the Alaska Native Claims Settlement Act (ANCSA) and the Transportation and Utility Corridor system process under Title XI of ANILCA.

Regulation of Valid R.S. 2477 Rights-of-Way

Congress enacted R.S. 2477 during a period when the Federal Government was promoting settlement of the West. In the same era and in the same manner, Congress granted rights-of-way for numerous purposes, perhaps most commonly for the construction of railroads. R.S. 2477 was part of an Act that granted other types of rights-of-way and certain mining rights. Later recodified along with other rights-of-way provisions, this simple statute had a very specific purpose, limited by its own terms, to authorize the construction of highways across the public domain. There is no legislative history elaborating on Congress' intent in passing this provision.

With the passage of FLPMA, Congress determined that lands managed by the Bureau of Land Management should be retained in public ownership and managed according to the principles of multiple use and sustained yield, while preventing unnecessary or undue degradation of the lands. 43 U.S.C. 1732(a),(b). FLPMA also sets forth a process for areas to be reviewed and designated as Wilderness Study Areas (WSA) while Congress considers inclusion of these areas in the National

Wilderness Preservation System. Section 603(c) of FLPMA requires that these areas are to be managed under FLPMA and "other applicable law" in a manner that will preserve the suitability for designation as wilderness and to prevent unnecessary or undue degradation and to provide environmental protection. 43 U.S.C. 1732(c).

In addition to providing for new management standards, FLPMA repealed R.S. 2477 and numerous other similar provisions, and provided a new, consolidated process for the granting and management of rights-of-way over Bureau of Land Management lands (and National Forest lands). Public Law 94–579, Section 706(a), 90 Stat. 2744, 2793 (1976); FLPMA, Title V, 43 U.S.C. 1761–1771. FLPMA neither terminated existing rights-of-way, nor exempted them from regulation under its standards. Public Law 94–579, Section 701(a), 90 Stat. 2786, 43 U.S.C. 1701 note. See also, *Sierra Club* v. *Hodel*, 848 F.2d 1068, 1086–1088 (10th Cir. 1988) (valid existing R.S. 2477 right-of-way can be regulated by BLM to prevent unnecessary and undue degradation).

Similarly, when Congress passed laws creating the National Park System and the National Wildlife Refuge System, it imposed new, more protective management standards on these categories of Federal land and directed the Department to uphold these standards. When most parks or refuges were created, pre-existing rights including rights-of-way usually were not terminated, but became subject to the new management regime. For example, the courts have interpreted the authority of the National Park Service to include regulation of pre-existing R.S. 2477 rights-of-way across National Parks. *United States* v. *Vogler*, 859 F.2d 638 (9th Cir. 1988), *cert. denied*, 488 U.S. 1006 (1989).

R.S. 2477 must be read against these requirements. While existing rights pursuant to R.S. 2477 were not terminated, their preservation did not provide prospective, unrestricted authority to create or improve highways without regard for the purposes of these land management systems, or other environmental and resource protection laws. That is, rights-of-way validly acquired pursuant to R.S. 2477 remain subject to regulation under the Federal laws that govern the underlying and adjacent Federal lands. An Advance Notice of Proposed Rulemaking, published separately today, announces that the Department is considering whether and how to promulgate specific regulations to address the management of R.S. 2477 rights-of-way.

Role of State and Federal Law

The relationship between State and Federal law is important both for determining whether a right-of-way was validly acquired and for determining the scope of a right-of-way. The proposed rule states that Federal law controls interpretation of the offer made by R.S. 2477, but that claimants are required also to comply with State law, which therefore may further condition the acceptance of a right-of-way or define its scope. A claimant cannot, however, accept under State law something that was not offered by Federal law.

The interplay between State and Federal law has created some confusion, which this proposed rule is intended to eliminate. The rule would continue to recognize the role of State law, to the extent that State law is consistent with the baseline requirements of Federal law. The Department is authorized to recognize only those interests in the Federal lands that have been established in accordance with the directions of Congress. It cannot recognize highways purported to be established under State laws that do not meet the minimal Federal statutory requirements, written into R.S. 2477, for construction of a highway over unreserved public lands.

This position was articulated as early as 1898. Secretary C.N. Bliss reviewed an Order of the Board of County Commissioners of Douglas County, Washington, which declared that with respect to R.S. 2477, all section lines in the county would be the center lines or side lines of highways that would be hereby declared to be 60 feet in width. Observing that the county's order "embodies the manifestation of a marked and novel liberality on the part of the county authorities in dealing with the public land," the Secretary affirmed the decision of the General Land Office that such State action could not validly accept the R.S. 2477 grant. The Secretary's decision provides guidance on the appropriate interpretation of these issues still before the Department nearly one hundred years later:

> There is no showing of either a present or a future necessity for these roads or that any of them have been actually constructed, or that their construction and maintenance is practicable. Whatever may be scope of the statute under consideration it certainly was not intended to grant a right of way over public lands in advance of an apparent necessity therefor, or on the mere suggestion that at some future time such roads may be needed.

26 I.D. 446, at 447 (1898).

As this decision illustrates, R.S. 2477 was intended to convey a right-of-way for highway purposes upon actual construction, and not merely upon the suggestion that a State or local government might need a highway in a suggested location at a later time.

The Department has referred to State law to fill in gaps in the terms of R.S. 2477. See 43 CFR 244.55 (1939); BLM Manual, Rel. 2–229. This is consistent with the approach taken by Federal courts, which have recognized that while the scope of a grant of Federal lands is a question of Federal law, and that any doubt as to the scope of the grant under R.S. 2477 must be resolved in favor of the Government, the Department may properly look to State law to determine the scope of a right-of-way. See, e.g., *United States* v. *Gates of the Mountains Lakeshore Homes*, 732 F.2d 1411, 1413 (9th Cir. 1984); *Sierra Club* v. *Hodel*, 848 F.2d 1068 (10th Cir. 1988).

When R.S. 2477 was repealed, the ability to acquire new rights under its auspices was also revoked. Therefore, provisions of State laws that authorize the "establishing" of highways without the requirements that there be actual construction of a highway over unreserved public lands, or provisions that authorize expansion of the scope of a right-of-way vested as of the repeal of the statute (or the reservation of the land, whichever was earlier) conflict with Federal law and may not be utilized.

When the Department makes a determination concerning the acquisition or scope of a right-of-way under these regulations, it will refer to State law as appropriate. The pertinent State law is that which was in effect at the time of the repeal of R.S. 2477 or at the time of the reservation of the land, whichever came first. All rights that could have been acquired must have been acquired prior to that date. Subsequent revisions of State law cannot expand these rights.

While this proposed rule was in preparation, a panel of the Ninth Circuit Court of Appeals issued a decision in the case of *Schultz* v. *Department of the Army*, 92–35197, 92–35580, 1993 U.S. App. Lexis 31037, (9th Cir., Nov. 30, 1993). The panel decision took a somewhat more lenient view of the criteria for establishing a valid R.S. 2477 right-of-way than does this proposed rule. The Federal Government believes the panel decision is not consistent with congressional intent or practice under the statute, and the United States is seeking a rehearing of the panel's decision before the full Ninth Circuit Court of Appeals. The Department will, of course, take any final decision in the case into account in moving forward with a final rule.

The Department specifically requests comments on the foregoing interpretation of the relationship between State and Federal law as applied to R.S. 2477.

Structure and Objective of the Proposed Rule

This proposed regulation is the first of two proposed parts. This part outlines a process for determining which rights-of-way were validly acquired. The second part, published separately today as an Advance Notice of Proposed Rulemaking, will outline options the Department is considering for determining how validly acquired rights-of-way will be managed on Department of the Interior lands.

This proposed rule aims to: define key terms of the statute, provide a process for assertion of claims for rights-of-ways, establish an administrative procedure for the orderly and timely processing of claims, establish a process for input from the public prior to the administrative determination of a claim, and provide an appeal process for any adversely affected party. The proposed regulations that will implement these objectives are proposed jointly by the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service in this rulemaking action and will be codified at 43 CFR part 39.

As indicated in an Advance Notice of Proposed Rulemaking, published separately today, the Department is also considering whether and how to manage rights-of-way determined to be validly acquired under these provisions. The Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service are each considering the need for regulations to govern the management of R.S. 2477 rights-of-way found to be validly acquired, consistent with the legal requirements that govern the adjacent and underlying Federal lands. Separate management regulations for each agency may be necessary because each has different statutory authority and management standards.

Applicability of the Regulations

These regulations would apply to all lands managed by the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service. Federal lands under the administrative jurisdiction of other bureaus in the Department of the Interior or other Federal agencies would not be affected by these regulations.

These regulations are intended to create a process by which R.S. 2477 right-of-way claims can be systematically filed and reviewed to determine whether the elements of the R.S. 2477 statute were met. In order for the Department to recognize that a right-of-way exists pursuant to R.S. 2477, a highway had to have been constructed when the public land it traverses was not reserved, or prior to the repeal of R.S. 2477, whichever was earlier.

The process provided in the proposed rule is not an application process for new rights-of-way, and the Department cannot grant new rights through these provisions. Rather, it is a process for formal recognition by the Department of rights-of-way that were validly acquired pursuant to R.S. 2477 prior to its repeal and the enactment of FLPMA. The Department's recognition that a right-of-way was validly acquired will improve manageability and convenience for the holder of the right-of-way and the Federal land manager.

The proposed rule would establish specific filing requirements and a specific process to facilitate efficient processing of claims. The implementing Federal officials will work with claimants to comply with these requirements. Failure to follow the process as outlined will delay processing and may result in an administrative denial of the claim. An administrative denial of a claim can be appealed to the Director of the appropriate agency, and if the desired relief is not received, to an appropriate Federal court.

R.S. 2477 rights-of-way that cross private or Indian or Alaska Native lands are not governed or affected by these regulations. The Department does not intend to make administrative determinations of claims for rights-of-way that cross lands that are now in State, private, Indian, or Alaska Native ownership or under the jurisdiction of another Federal agency.

Section by Section Analysis

Section 39.1 Purpose

This section would state the purposes of the rule.

Section 39.2 Authority

This section would provide citations to the general authorities of the Secretary of the Interior, and to the specific authorities of the National Park Service, Bureau of Land Management, and U.S. Fish and Wildlife Service to manage the Federal lands.

Section 39.3 Definitions

This section would define the statutory terms of R.S. 2477 and other key terms in these regulations.

Paragraph (a) Administrative Determination: The decision made by the authorized officer after consideration of the evidence would be called the administrative determination. It will include a finding of whether the right-of-way was validly acquired, and if so, describe its scope. If a claimant has received a judicial determination that a right-of-way was validly acquired, the administrative determination will describe any aspects of the right-of-way not decided by the court, including, if applicable, its scope.

Paragraph (b) Authorized Officer: Claimants would file their claims with an authorized officer. The authorized officer is the State Director of the Bureau of Land Management, or the Regional Director of the Fish and Wildlife Service, or the Regional Director of the National Park Service, who has jurisdiction over the Federal land over which a claim pursuant to R.S. 2477 lies. The rule proposes that State or Regional Directors be authorized to delegate this responsibility.

Paragraph (c) Claim: This term would be defined as the filing of documentation that asserts the existence and scope of a right-of-way pursuant to R.S. 2477 across lands managed by the Department of the Interior. Claims must contain information sufficient to allow the authorized officer to evaluate the validity of the claim and/or to describe its scope.

Paragraph (d) Claimant: The term claimant would be defined as any person or entity asserting the existence of and a property interest in a right-of-way pursuant to R.S. 2477 across lands managed by the Department of the Interior under these regulations or in any court action. The Department presumes that all claimants will be State or local government agencies with authority for public highway management. However, there may be rare cases in which a private citizen constructed and operates a highway (that meets all other requirements) in such a manner as to have validly acquired a right-of-way pursuant to R.S. 2477. The Department will consider such claims, unless they are precluded by State law, but will require that these same standards be met. The Department specifically requests comments on whether and how, in any case of a private claim, State or local agencies with jurisdiction over highways in the area should be notified, consulted, and involved in the determination of validity.

Paragraph (e) Construction: In interpreting R.S. 2477, ordinary rules of statutory construction dictate that every word in the statute be given effect. See Sutherland, *Statutory Construction*,

Fourth Edition, Section 46.01, (1984). Construction is an important term: it is the act required to be performed in order to complete the right-of-way grant. R.S. 2477 granted a right-of-way upon the construction of a highway, not the dedication or planning or designing of a highway. Prior to its repeal, new construction for highway purposes could complete acceptance of new or additional rights-of-way, so long as the land remained unreserved at the time of construction.

The definition in the proposed regulations would recognize that standards of highway construction technology changed between the time when R.S. 2477 was passed and when it was repealed. The definition also recognizes that Congress intended in R.S. 2477 to authorize a specific activity—the construction of highways—and did not intend, and would not have needed, to authorize less durable forms of access. The proposed rule, therefore, would require that intentional physical acts be performed with the achieved purpose of preparing a durable, observable, physical modification of land and that this modification be suitable for highway traffic.

Where a path or trail was created initially by the mere passage of vehicles, the construction requirement is met only if the path or trail has been subsequently maintained by acts that meet the requirements of construction, before the latest available date (defined below). Construction of a highway cannot be accomplished solely by any of the following activities: continual passage over a surface that has not previously been intentionally constructed, even if the continual passage eventually creates a defined route; clearing of vegetation; or removal of large rocks. The Department specifically requests comments on this definition, including the requirements to show intentional acts, durable and observable physical modifications of land, and a link to highway traffic.

Paragraph (f) Highway: R.S. 2477 authorized the construction of highways, not railroads or canals or other types of access. When R.S. 2477 was enacted, a highway was understood to mean an open public road that served public travel or commerce needs or connected places between which people or goods traveled. Congress presumably authorized the construction of highways to make it possible for vehicles, including wagons, to travel them. There is no legislative history to suggest that Congress meant to authorize the construction of highways for private uses, for foot traffic, or for a road that did not provide needed access from one public destination to another.

The Department specifically requests comments on this definition, including the requirements to show current use, vehicular use, public use, and the connection between places made possible by the construction of the highway. The Department also requests comments on whether any of these terms needs further definition. The Department is considering whether to require a more specific showing that a right-of-way that once existed, but is no longer used, has not been abandoned and requests comments on this issue.

This definition of highway would not rule out the later adoption of a private road by a public entity, prior to repeal of the statute (or reservation of the land if this was earlier) in order to establish the right-of-way under the authority of R.S. 2477. The Department does not intend to require that all rights-of-way run from city to city; as long as the route connects identifiable places to which the public travels, it may meet this requirement. The Department therefore interprets the term highway to mean a thoroughfare that is currently and was, prior to the latest available date, used by the public without discrimination against any individual or group for passage of vehicles carrying people or goods from place to place. State law that was in effect on the latest available date may place additional limits on what kind of thoroughfare can be considered a highway in that State—claimants are also required to comply with these limits.

Paragraph (g) Holder: The term holder means someone whose claim of a right-of-way pursuant to R.S. 2477 has been determined to be valid under these regulations or by a Federal court in an appropriate case (see definition of Judicial Determination).

Paragraph (h) Improvement: The proposal divides all maintenance or construction activities that might take place on a claimed right-of-way into two categories: improvements and routine maintenance (which is defined separately). Improvements are considered any of these activities that expand the scope of the right-of-way; routine maintenance activities are any activities within that scope. Improvements may include activities such as paving a dirt road, widening a right-of-way, clearing vegetation from outside the scope of the right-of-way, removing materials from adjacent Federal lands, realignment, or new occupation of Federal land for any purpose. The Department does not interpret the R.S. 2477 savings provision to authorize improvements that expand the scope of the right-of-way as it existed on the latest available date. The Department requests comments on these issues, including comments on how specific the regulations should be on these points.

Paragraph (i) Judicial Determination: The term judicial determination means a decision by a United States Federal court holding that someone validly acquired a right-of-way pursuant to R.S. 2477. The Department of the Interior will not give binding effect to State court determinations on the validity of rights-of-way pursuant to R.S. 2477 unless the United States was a party to those cases (which was rarely if ever the case). However, if a claimant has received a State court determination that a right-of-way was validly acquired pursuant to R.S. 2477, it is evidence that the authorized officer will consider in making his or her administrative determination.

Paragraph (j) Latest Available Date: This is the latest date on which a party could have acquired a right-of-way pursuant to R.S. 2477. The latest available date is the earliest of (1) the date of repeal of R.S. 2477 (October 21, 1976) in the case of public lands that were unreserved as of that date, or (2) the date the public lands were reserved for public uses (such as the date of reservation of the lands to create a National Park), because at that point the land was no longer "not reserved for public use."

Paragraph (k) Maintenance: Maintenance is defined in this section as recurring or periodic actions that repair and prevent damage to the right-of-way surface and keep the right-of-way surface suitable for travel by the intended vehicles. This term is included in order to provide descriptions of the usual, periodic kinds of activities that are conducted on public highways and must be read along with the terms "improvements" and "routine maintenance," both of which are defined separately. Maintenance activities may include: grading, planking, graveling, asphalting, surfacing, cuts and fills, preparation of drainage ditches, curbing, or installation of culverts. The Department requests comments on these issues.

Paragraph (l) Public Lands Not Reserved for Public Uses: This term is used in R.S. 2477 and means lands owned by the United States that were available and open to the public under various public land laws that provided for disposition to the public, but that had not been set aside, withdrawn, reserved, dedicated, settled, preempted, entered, appropriated, disposed of, located, or otherwise reserved. These

are now commonly referred to as "unreserved public lands." Lands can be reserved by an Act of Congress, Presidential Proclamation or Executive Order, Secretarial Order, or other classification action.

These proposed regulations would not apply to reserved Federal lands, acquired Federal lands, privately held lands, or lands held in fee by Indian tribes or by individual Indians or Alaska Natives.

Paragraph (m) Public Land Records: This term refers to the records of the Bureau of Land Management and the Bureau's predecessor agency, the General Land Office. These records are relevant even where the claimed R.S. 2477 right-of-way crosses lands managed by the National Park Service or the U.S. Fish and Wildlife Service. This is because the right-of-way must have been acquired prior to the land being withdrawn or reserved as a National Park or Wildlife Refuge, that is, when the lands were managed by the Bureau of Land Management or its predecessor agency.

Paragraph (n) Routine maintenance: This term would be defined as maintenance activities that are within the scope of the right-of-way as it existed on the latest available date. Activity that expands the scope is considered an "improvement." Routine maintenance may include activities such as grading, or repairing potholes or existing culverts, and other minor, necessary activities that do not alter the character of the right-of-way or affect Federal lands. Routine maintenance probably would not include activities such as paving a dirt road, widening the right-of-way, clearing vegetation outside the scope of the right-of-way, removing material from adjacent Federal lands, realignment, or new occupation of Federal land for any purposes. The Department requests comments on these issues.

Paragraph (o) Scope: Until the repeal of R.S. 2477 (or the reservation of the land, if earlier), claimants could acquire new rights-of-way or expand the scope of already acquired rights-of-way by constructing additional highways or by widening, realigning, or otherwise expanding an existing highway. After the latest available date, however, no new rights under R.S. 2477 could be acquired. New rights-of-way and new uses of Federal land require authorization under FLPMA or other statutory authorities. The scope of the right-of-way that the holder validly acquired is that which was actually in use for public highway purposes at the latest available date. Where State law, as of the latest available date, further limits the scope of a right-of-way, these limits also apply. The Department specifically requests comments on its interpretation of scope, including whether or when it is necessary or useful for the Department to provide, as part of its Administrative Determination, a written description of scope and, if so, what parameters should be used to describe it.

The authorized officer will generally look to the current condition of the right-of-way as evidence of the validly acquired scope. Any future expansions of scope or creation of new rights-of-way would need to be authorized under other available statutory provisions, such as Title V of FLPMA. Some expansion of scope may have occurred after the repeal of R.S. 2477 in 1976 (or reservation of the land if earlier) on some rights-of-way. Generally, the Department does not intend to treat these activities as trespass, unless neither the courts nor the Department approved the expansion and significant public values are threatened by the expansion. In some cases, Department officials and Federal courts authorized expansion of the scope of a particular right-of-way and these authorizations will be upheld.

Paragraph (p) Secretary: This term means the Secretary of the Interior.

Section 39.4 Recognition of a Validly Acquired Grant

This section would provide that the Department will recognize Federal court decisions, and decisions of the authorized officer under these regulations, that a right-of-way was validly acquired. All parties that already have obtained judicial determinations that they hold a right-of-way pursuant to R.S. 2477 must file a copy of the judicial determination with the authorized officer. This will allow the Department to maintain current, accurate records and to manage the right-of-way appropriately. Any issues that are not resolved in the judicial determination, including the scope of a right-of-way, will be determined by the authorized officer under these regulations.

This section further provides that the Department will recognize the scope of a right-of-way when it is described by either a Federal court or the authorized officer. Where a claimant has received a judicial determination of validity, but the court does not provide a specific description of its scope, the holder must file a claim to gain recognition of the scope.

Section 39.5 Interests Granted and Retained by the United States

This section would enumerate the limited interests that were granted and acquired under R.S. 2477. The Department is considering whether these regulations should authorize the U.S. to receive a conveyance of an R.S. 2477 right-of-way from a claimant or holder, consistent with applicable law and subject to appropriate terms and conditions. Such conveyances may be mutually beneficial in cases where a State or county does not want to retain the legal and financial liability for an R.S. 2477 right-of-way, but the right-of-way provides important public access to or across Federal lands. The Department specifically requests comments on this issue.

Section 39.6 Filing Process for Administrative Determination

Paragraph (a) Requirement to File a Claim. Claimants would be required to file a request for an administrative determination of the validity and/or scope of each R.S. 2477 claim within 2 years after the effective date of the final rule. By requiring claimants to file their claims by this date, the agency will then have a record of all potential rights-of-way, and will be able to consider this information in land use planning and other management decisions. The Department specifically requests comments on the length of the filing period.

The proposed regulations require claimants to file a claim for a right-of-way pursuant to R.S. 2477 in all cases, even if they previously filed a map with the Bureau of Land Management showing the location of highways constructed under the authority of R.S. 2477, as requested by 43 CFR 2802.5(b). That regulation specifically states that the submission of the maps is not conclusive evidence of the existence of the rights-of-way.

Paragraph (b) Determination of the Appropriate Office. If the claim crosses lands managed by only one agency, the claimant should file in the appropriate Regional or State office of that agency. However, where right-of-way claims cross lands managed by more than one agency, the proposed rule would direct the claimant to the office where the claim should be filed. For the convenience of claimants and the Department, claims for a single right-of-way should not be segmented by filing a claim for a portion of a right-of-way in a particular office, for any reason.

Paragraph (c) Information Required in the Claim. A claim would be required to include sufficient information to

demonstrate to the authorized officer that each element of R.S. 2477 and each requirement of these regulations has been met, and to determine the scope of a claimed or judicially determined right-of-way. By requiring that standard information be provided for all claims and allowing the authorized officer to determine the sufficiency of each point, the Department believes it is establishing a process that will be fair and consistent as well as flexible enough to allow for differences in record-keeping.

Claimants would be required to provide general historic and descriptive information and any additional documentation necessary to demonstrate that a claimed right-of-way was validly acquired, including proof of construction of a highway across public lands not reserved for public uses, as those terms are herein defined. In order to facilitate speedy processing, provide manageable standards for authorized officers, and to make documenting a claim easier for claimants, this section sets forth some specific types of proof, including numerous kinds of public records, that are most likely to make these demonstrations. Obvious claims will be easily documented and easily approved. Although some evidence of each point is required, the authorized officer will weigh the evidence produced as a whole in making the requisite determination. Less obvious claims can be documented using numerous kinds or combinations of evidence, and can be approved if the evidence shows that the elements of R.S. 2477 and these regulations are met.

If the authorized officer believes that more information is needed in order to make a fair and informed decision, the claimant may be asked to provide additional information. If a claimant has already received a judicial determination that an R.S. 2477 right-of-way has been validly acquired, the claim should include a copy of that determination, along with any other information necessary for an administrative determination of any issues not determined by the court.

The claimant is required to provide evidence of actual construction (see definition of Construction). The proposed regulations illustrate the kinds of information that are likely to meet the requirement. The claimant is also required to provide sufficient evidence that the claimed right-of-way meets the definition of highway and was constructed across public lands not reserved for public uses at the time of the construction.

The Department specifically requests comments on these requirements, whether they are sufficiently flexible, specific, and predictable, and on the amount of discretion provided to authorized officers.

Section 39.7 Effect of Failure to File a Claim

The rule would require claimants to file claims within 2 years after the effective date of the final rule. The failure to file a claim by that date would be deemed to constitute a relinquishment of any rights purported to have been acquired under R.S. 2477. Any claims filed after that date would not be accepted or processed. A refusal to process a claim submitted after this date would be final agency action.

A filing deadline is necessary to enable the land managing agencies to approach land use planning and other management issues with complete information, and to provide certainty to public land users and those whose title may be affected by such claims. Earlier requests for this information not accompanied by a filing deadline did not elicit significant responses. Anyone who fails to file a claim within this period, but who wishes to assert the existence of a right-of-way, can seek authorization for the use of the right-of-way under other existing statutory authority, such as Title V of FLPMA, 43 U.S.C. 1761–1771.

The process in the proposed rule would provide claimants with a reasonable method of obtaining an administrative determination of their claims without undertaking the expense and time of litigation. Some claimants may find the existing procedures under the Title V of FLPMA, or other statutory authorities, to be a more familiar and speedy process for resolving their right-of-way claims.

This section also provides that these regulations, from their effective date, shall serve as notice for purposes of the Quiet Title Act that the United States asserts an adverse interest in all purported R.S. 2477 rights-of-way that cross Federal lands. This will start the clock running on the applicable twelve year statute of limitations period for filing a quiet title action in Federal court. This provision is not intended to provide any additional time to a claimant if any prior notice has already been given of an adverse Federal claim, or otherwise affect any prior notice that might have been given of an adverse Federal claim.

The net effect of the proposal is that claimants will have two years from the date of final regulations to file claims with the Department for administrative determinations of the claims and twelve years from the date of final regulations to file suit in Federal court to establish their rights. After these two periods lapse, all unfiled claims would be extinguished.

The Department specifically requests comments on these provisions, including on its legal authority to require claimants to follow this administrative process.

Section 39.8 Processing of the R.S. 2477 Claim

Paragraph (a) Additional Information. This section would set out the procedure that the authorized officer will follow in processing the claim. The authorized officer will review the information submitted with the claim to determine its sufficiency. Where the authorized officer determines that additional information is necessary, the claimant will be notified in writing and afforded an opportunity to furnish the information. The Department is considering whether to require that such additional information be supplied within a specific amount of time, such as 60 days, and specifically requests comments on this issue.

Failure of a claimant to make reasonable and timely efforts to respond to a request for additional information would be deemed to constitute a relinquishment of any rights purported to have been acquired under R.S. 2477. The Department's decision not to process an incomplete claim will constitute final agency action.

Paragraph (b) Consultation with other Federal agencies. If the claimed right-of-way also crosses lands that are under the jurisdiction of other Federal agencies (including agencies that are not within the Interior Department, such as the U.S. Forest Service or the Department of Defense), the authorized officer will consult with the other agencies. In addition, if the claimed right-of-way abuts lands managed by other agencies, the authorized officer will consult with these agencies. This consultation will allow the other agencies to offer input and information to the authorized officer.

Paragraph (c) Consultation with the Bureau of Indian Affairs. This proposed provision details the circumstances in which the authorized officer will consult with the appropriate office of the Bureau of Indian Affairs (BIA). The purpose of this consultation is to provide BIA with the opportunity to contact persons or Indian tribes affected by these claims. The Department specifically requests comments on whether this process provides sufficient notice to Indians and Alaska Natives about right-of-way claims that may affect their lands.

Paragraph (d) Public Notification of Filing of the Claim. The authorized officer will notify the public that a claim has been filed by publishing a notice in a newspaper once a week for three consecutive weeks. The notice will be published in a local newspaper that is distributed in the area of the claim. The paragraph specifies the information that will be included in the notice. The authorized officer will receive public comments for at least 30 days beginning after the last notice has appeared in the paper. The Department specifically requests comments on the sufficiency of this procedure and the utility and cost-effectiveness of other public notification procedures.

Paragraph (e) Disqualification of the Claim. There are some situations in which the authorized officer will not process the claim. If a Federal court or a Department of the Interior agency has previously made a determination that a right-of-way is not a valid right-of-way pursuant to R.S. 2477, then the authorized officer will not substitute his or her decision for the previous judgment of the court or decision by the agency. A claimant may not make multiple claims or shop for a different result in different offices. The Department specifically requests comments on whether other types of Congressional or administrative determinations, such as the designation of Wilderness Areas or Wilderness Study Areas, should automatically disqualify a claim from consideration in the Department's administrative process proposed by these regulations.

Paragraph (f) Review of the Claim. This paragraph directs the authorized officer to review the claim and determine whether the evidence is sufficient to establish that the claimed right-of-way was validly acquired. The authorized officer has some discretion to account for differences in record-keeping processes and to examine the overall claim for sufficiency. The Department specifically requests comments on the standards by which authorized officers will evaluate claims.

Paragraph (g) Administrative Determination: After review of the information submitted by the claimant, review of the Bureau of Land Management official public land records for the area in question, consultation with affected Federal agencies, and consideration of public comment, the authorized officer will prepare an administrative determination.

The administrative determination will not be final until the authorized officer obtains the concurrence of the authorized officers of the other Department of the Interior land managing agencies (the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service) that have jurisdiction over lands crossed by the claim. For example, if a claim of a right-of-way crosses both Park Service and Bureau of Land Management lands, the authorized officer is the Regional Director of the National Park Service or his or her designee. Before the Regional Director makes a final administrative determination of the claim that crosses Park Service and Bureau of Land Management lands, he or she will consult with and obtain the concurrence of the Bureau of Land Management authorized officer. Concurrence of other Federal agencies is not required. Having such "one stop shopping" should make the process simpler and faster for the claimants, and ensure that all appropriate information for a particular claim is available for the authorized officer's consideration.

The authorized officer will address issues raised during the public review and comment period, and determine whether to recognize an R.S. 2477 right-of-way and, if so, its scope. The Department requests comment on whether or when it is necessary or useful to provide, as part of an Administrative Determination, a written description of scope and, if so, what parameters should be used to describe it.

Paragraph (h) Public Notification of Administrative Determination. The authorized officer will publish a notice in a newspaper of general distribution in the vicinity of the claim and in the **Federal Register**. The notice will alert the public to the results of and reasons for the determination. A copy of the administrative determination will be sent to the claimant. The Department specifically requests comments on the sufficiency and utility of these procedures and the utility and cost-effectiveness of other public notification procedures.

Section 39.9 Appeals Procedure From Administrative Determinations

The proposed regulations allow any interested party, including the claimant, State or local governments, and other public land users to appeal the administrative determination to the Director of the Bureau or Service. This will allow for efficient processing of appeals and uniformity in the decisions. Appeals are required to be in writing and must be submitted to the Director within 30 days of the decision's publication. The decision of the authorized officer will take effect 30 days after its publication in the **Federal Register**, unless the decision is properly appealed to the Director during that time.

The Director of the appropriate Bureau or Service will consider the official files of the authorized officer and any evidence submitted to the authorized officer by any interested party. The Director may ask the parties or the authorized officer for additional information and may provide for a hearing. If the claim involves land managed by more than one Department of the Interior land managing agency, the Director will consult with and obtain the concurrence of the Director of the other agency or agencies before making a final decision on the appeal.

The Department specifically requests comments on whether a different type of appeals process should be considered; for example, whether a hearing should be required or allowed if requested, whether appeals should be sent to a hearing board or other bureau official rather than a bureau director, whether decisions should be effective immediately or await action on any administrative appeal, and whether appeals should be limited to parties that participate in the determination of a claim.

Section 39.10 Interim Activity

This section would provide guidance on the activities that claimants can engage in before a final administrative determination is issued or while any administrative appeal is pending. The Department will allow interim activities on all rights-of-way that are currently maintained by claimants, in accordance with these regulations, until final agency determinations are made. The Department specifically requests comments on whether these procedures will provide a workable framework for necessary activities of claimants while adequately protecting public resources.

The principal authors of this proposed rule are Ted D. Stephenson, Chief, Branch of Lands and Minerals Operations, Utah State Office, Ted G. Bingham, Deputy State Director for Operations, Arizona State Office, Sue A. Wolf, Chief, Branch of Lands, Alaska State Office, Bill Wiegand, Idaho State Office, and Ron Montagna, Realty Specialist, Division of Lands, Washington Office, assisted by the staff of the Division of Legislation and Regulatory Management, all of the BLM; Tony Sisto, Ranger, Ranger Activities Division of the National Park Service; Duncan Brown, Counselor to the Division of Refuges, U.S. Fish and Wildlife Service; and Karen Mouritsen, Barry Roth, Renee Stone, and Ruth Ann Storey from the Office of the Solicitor,

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule would not create environmental impacts. No critical element of the human environment would be affected because the proposed rule would merely establish a process for determining whether claimed rights-of-way across Federal lands were validly acquired pursuant to R.S. 2477. No new rights-of-way would be authorized under the proposed rule. The Department would use these regulations to determine, in individual situations, whether valid existing rights-of-way exist under a law repealed eighteen years ago. If such rights are determined to exist under these regulations, they will be subject to regulation under other laws, and NEPA is applicable to these processes.

This rule has been reviewed under Executive Order 12866.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule principally affects governmental entities that own and operate public highway rights-of-way that cross Federal land.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. There would be no taking of private property by this rule. The entities principally affected by the rule are public in nature and the only proceedings authorized by the proposal are assessments of whether valid rights exist. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the proposed rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in section 1(a) and 2(b)(2) of Executive Order 12788.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. The information would be collected to permit the authorized officer to determine the validity and scope of rights-of-way claimed to have been acquired under R.S. 2477. The information would be used to make this determination.

Public reporting burden for this information is estimated to average _____ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (873), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240, or the Service Information Collection Officer, U.S. Fish and Wildlife Service, MS–224 ARLSQ, 1849 C Street, N.W., Washington, D.C. 20240, or Chief, Management Analysis and Control Branch, Management Services Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, and the Office of Management and Budget, Paperwork Reduction Project, 1004-xxxx, Washington, DC 20503.

List of Subjects in 43 CFR Part 39

Highways and roads, Public lands—rights-of-way, Reporting and record-keeping requirements.

For the reasons set forth in the preamble, and under the authorities stated below, subtitle A of title 43 is proposed to be amended by adding a new part 39 to read as follows:

PART 39—REVISED STATUTE 2477 RIGHTS-OF-WAY

Sec.

Authority: 43 U.S.C. 1201, 1733 and 1740.

§ 39.1 Purpose.

The purposes of the regulations in this part are to:

(a) Establish procedures for the orderly and timely processing of claims for rights-of-way pursuant to R.S. 2477 over lands managed by the Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service;

(b) Define key terms;

(c) Establish public notice and appeal processes of claims for rights-of-way pursuant to R.S. 2477; and

(d) Provide for the use of rights-of-way validly acquired pursuant to R.S. 2477, consistent with the management of adjacent and underlying Federal lands.

§ 39.2 Applicability and authority.

The regulations in this part apply to right-of-ways claimed pursuant to R.S. 2477 on Federal lands administered by the Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service, all land managing agencies under the U.S. Department of the Interior. R.S. 2477, Section 8 of the Act of July 26, 1866, 43 U.S.C. 932, granted a right-of-way for the construction of highways on public lands not reserved for public uses. R.S. 2477 was repealed by Section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701–1784. Existing rights-of-way were not terminated. 43 U.S.C. 1769(a). FLPMA created a new process for the issuance of rights-of-way to provide access to and across Bureau of Land Management and U.S. Forest Service lands. 43 U.S.C. 1761–1771.

(a) *Department of the Interior.* The Secretary of the Interior has broad authority to promulgate regulations for the management of Department of the Interior lands pursuant to 43 U.S.C. 1201 and 1457.

(b) *Bureau of Land Management.* Sections 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1732(b) and 1740, authorize the Bureau of Land Management to promulgate regulations to prevent unnecessary or undue degradation of lands managed by the Bureau of Land Management and to implement the purposes of FLPMA and other public land laws. Section 603(c), 43 U.S.C. 1782(c), requires the Secretary of the Interior to manage wilderness study areas, by regulation or otherwise, to prevent unnecessary or undue degradation and to prevent impairment of wilderness characteristics.

(c) *U.S. Fish and Wildlife Service.* 16 U.S.C. 668dd authorizes the Secretary, acting through the Director of the U.S. Fish and Wildlife Service, to issue regulations relating to public use of any area within the National Wildlife Refuge System. In addition, 16 U.S.C. 460k–3 authorizes the Secretary to issue

regulations relating to public use of national wildlife refuges, game ranges, national fish hatcheries, and other conservation areas administered by the Department for fish and wildlife purposes. With respect to any unit of the National Refuge System located in Alaska, the Alaska National Interest Lands Conservation Act (ANILCA) requires the Secretary to prescribe regulations to ensure that activities carried out under any use or easement granted "under any authority" are compatible with the purposes for which the refuge was established. ANILCA, Section 304(b), Pub. L. 96–487, 94 Stat. 2371, 2395 (1980).

(d) *National Park Service.* The National Park Service Organic Act, 16 U.S.C. 1–4, provides that the purpose of the National Park Service is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. The Secretary has specific authority to make rules and regulations in furtherance of these purposes. 16 U.S.C. 3.

§ 39.3 Definitions.

The following definitions apply to this part:

(a) *Administrative determination* means the decision issued by an authorized officer under this part that determines the validity and/or scope of a claim of a right-of-way pursuant to R.S. 2477.

(b) *Authorized officer* means the State Director of the Bureau of Land Management, or the Regional Director of the U.S. Fish and Wildlife Service, or the Regional Director of the National Park Service, or their respective designee, with jurisdiction over the Federal land over which a claim pursuant to R.S. 2477 lies.

(c) *Claim* means the filing of appropriate documentation under this part asserting the existence of and a property interest in a right-of-way pursuant to R.S. 2477 across lands managed by the Department of the Interior. Claim also means the filing of appropriate documentation under this part showing that a judicial determination has been made of the existence of a right-of-way pursuant to R.S. 2477 across lands managed by the Department of the Interior and asserting any rights not expressly recognized in the judicial determination.

(d) *Claimant* means any person or governmental entity that asserts the existence of and a property interest in a right-of-way pursuant to R.S. 2477 across lands managed by the Department of the Interior under this part or in any Federal court action. Where State law, in effect on the latest available date, further limits the class of persons who may own or operate highways, these limits also apply.

(e) *Construction* means an intentional physical act or series of intentional physical acts that were intended to, and that accomplished, preparation of a durable, observable, physical modification of land for use by highway traffic. Where State law, in effect on the latest available date, further limits the definition of construction, these limits also apply.

(f) *Highway* means a thoroughfare that is currently and was prior to the latest available date used by the public, without discrimination against any individual or group, for the passage of vehicles carrying people or goods from place to place. Where State law, in effect on the latest available date, further limits the definition of highway, these limits also apply.

(g) *Holder* means a claimant who has received an administrative or judicial determination that its claim to a right-of-way pursuant to R.S. 2477 is valid.

(h) *Improvement* means any maintenance or construction activity that expands the scope of the right-of-way.

(i) *Judicial* determination means a decision by a United States District or Territorial court, or higher United States Federal court, that holds that a claimant holds a right-of-way pursuant to R.S. 2477.

(j) *Latest available date* means the latest date on which a right-of-way pursuant to R.S. 2477 could have been acquired, which shall be prior to:

(1) October 21, 1976, in the case of lands that were unreserved public lands as of that date; or

(2) The date the public lands were reserved for public uses (such as the date of withdrawal from entry or designation of public use by statute, Presidential Proclamation or Executive Order, Secretarial Order, or administrative decision) in the case of public lands reserved for public uses before October 21, 1976.

(k) *Maintenance* means recurring or periodic actions that repair or prevent damage to an existing right-of-way surface and keep an existing right-of-way surface suitable for travel by the intended vehicles.

(l) *Public Lands Not Reserved for Public Uses* or *Unreserved Public Lands* means lands owned by the United States that were available and open to the public under various public land laws that provided for disposition to the public, but that had not yet been set aside, dedicated, withdrawn, reserved, settled, preempted, entered, appropriated, disposed of, located, or otherwise reserved.

(1) The terms "public lands not reserved for public uses" and "unreserved public lands" do not include:

(i) Lands that were set aside, dedicated for specific purposes, withdrawn, or otherwise reserved from disposition under the public land laws by an Act of Congress, Presidential Proclamation or Executive Order, Secretarial Order, or classification actions authorized by statute that specified that the land would be used for a specific purpose or that prevented certain uses;

(ii) Lands that were settled, preempted, entered, appropriated, disposed of, located, or otherwise reserved to private parties or States under the public land laws or mining laws;

(iii) Lands that were owned by the United States, disposed of to a private party, and later reacquired by the United States (unless expressly re-opened prior to the latest available date);

(iv) Lands that were acquired by the United States from a party other than a foreign sovereign (unless expressly re-opened prior to the latest available date); or

(v) Other reserved lands.

(2) Lands are removed from the status of "public lands not reserved for public uses" on the date of the withdrawal or other reservation.

(3) If a settlement, claim, or entry does not proceed to patent, is declared invalid, is abandoned or relinquished, or the United States revokes the withdrawal or other reservation, the land may return to the status of "public lands not reserved for public uses," on the date on which the public land records so reflect that status.

(m) *Public land records* means the records of the Bureau of Land Management or its predecessor agency, the General Land Office.

(n) *Routine maintenance* means maintenance activities that are within the scope of the right-of-way.

(o) *Scope* means the width, surface treatment, and location actually in use for public highway purposes at the latest available date, unless otherwise determined by a United States Federal court. Where State law, in effect on the latest available date, further limits the scope of a right-of-way, these limits also apply.

(p) *Secretary* means the Secretary of the Interior.

§ 39.4 Recognition of a validly acquired right-of-way.

(a) The Department of the Interior will recognize that a right-of-way was validly acquired pursuant to R.S. 2477 only if that determination is made by one of the following:

(1) A United States District or Territorial court, or higher United States Federal court; or

(2) The authorized officer in accordance with this part.

(b) The Department of the Interior will recognize the scope of a right-of-way pursuant to R.S. 2477 only if it is described by one of the following:

(1) A United States District or Territorial court, or higher United States Federal court; or

(2) The authorized officer in accordance with this part.

§ 39.5 Interests granted and retained by the United States.

(a) *Interests validly acquired pursuant to R.S. 2477.* Upon valid acquisition, a claimant received a right-of-way for public access for highway purposes. The right to acquire new rights under R.S. 2477 was terminated as of the latest available date. A holder may perform routine maintenance. Routine maintenance, construction, improvement, use, and operation of the right-of-way shall be subject to regulation.

(b) *Interests retained by the United States.* R.S. 2477 granted a right-of-way upon the construction of a highway across public land not reserved for public uses. All other rights were retained by the United States, including all rights not actually acquired prior to the latest available date. These rights include but are not limited to continuing rights to regulate, enter, and authorize other uses of the right-of-way. The United States retains the authority to regulate routine maintenance, construction, improvement, use, and operation of the right-of-way.

§ 39.6 Filing process for administrative determination.

(a) *Requirement to file a claim.* All claimants shall file their claims with the appropriate office in the State or Region in which the claim lies, not later than [30 days plus 2 years after date of publication of final rule]. All holders of judicial determinations shall file a claim, including a copy of the judicial determination and any other necessary information, with the appropriate office in any State or Region in which the claim lies, not later than [30 days plus 2 years after date of publication of final rule]. Any aspects of a judicial determination not addressed by the court, including scope, will be determined under this part.

(b) *Determination of appropriate office.* The appropriate office is determined by the following:

(1) If any part of the claim crosses lands managed by the National Park Service, the appropriate office is the Regional Office of the National Park Service. Contact the nearest National Park for the address of the appropriate Regional Office.

(2) If any part of the claim crosses lands managed by the U.S. Fish and Wildlife Service, and does not cross lands managed by the National Park Service, the appropriate office is the Regional Office of the U.S. Fish and Wildlife Service. See 50 CFR 29.21–2(c) for the address of the appropriate Regional Office.

(3) For claims that cross lands managed by the Bureau of Land Management, but not the National Park Service or the U.S. Fish and Wildlife Service, the appropriate office will be the State Office of the Bureau of Land Management. See 43 CFR 1821.2–1 for the address of the appropriate State Office.

(c) *Information required in claim.* A claim shall contain sufficient information to demonstrate to the authorized officer that each element of R.S. 2477 and each requirement of this part have been met (unless the claimant already holds a judicial determination of validity), and any additional information necessary to determine the scope of the right-of-way. At a minimum the claim shall contain:

(1) The name and affiliation of the claimant;

(2) The address where service may be made on the claimant, including name(s) or agent(s) authorized to act for it, and the statute, resolution, ordinance, or other warrant authorizing such officer(s) or agent(s) to act on behalf of the claimant;

(3) A general description of the highway on which the claim is based, including at least the local name, State or county number, beginning and ending points, type of surface, width and other relevant information, and identification of the claim on maps in sufficient detail to allow location on the ground by a competent engineer or surveyor.

(4) A summary of the history of the construction and use of the right-of-way up to the present.

(5) A statement of whether any profiles, constructions, as-built or similar detail maps or diagrams of the right-of-way are available and, if so, where such material may be viewed or copies obtained;

(6) If the right-of-way has been the subject of a prior judicial or administrative determination, the case or file identification number, results of the last action taken, and the dates thereof.

(7) If applicable, a citation to relevant State law in effect on the latest available date;

(8) Evidence of construction, which shall include evidence of each part of the definition of construction, including:

(i) Intentional physical acts, which may be shown by evidence that the roadbed was prepared with the use of tools, either hand tools, power tools, or machinery; and

(ii) Preparation of a durable, observable, physical modification of land, which may be shown by records of expenditures for, or other records of, highway construction activities or maintenance after the initial construction at necessary and appropriate intervals so that the right-of-way was a relatively continuous route for travel;

(9) Evidence that the claimed right-of-way is a highway, which shall include evidence of each part of the definition of highway, including:

(i) Public use, which may be shown by records establishing that the right-of-way is currently and was prior to the latest available date officially acknowledged, funded, or maintained by a State or local government public highway management agency;

(ii) Vehicular use, which may be shown by historic evidence or records of use for commercial or personal purposes by vehicles appropriate to the time and terrain; and

(iii) The thoroughfare served as a connection between public destinations, which may be shown by describing the places that the right-of-way connects or provides access to; and

(10) Evidence that the land over which a claim of a right-of-way pursuant to R.S. 2477 lies was public land not reserved for public uses at the time of construction.

§ 39.7 Effect of failure to file a claim.

The failure to file a claim by *[30 days plus 2 years after date of publication of final rule]* shall be deemed to constitute a relinquishment of any rights purported to have been acquired under R.S. 2477. Claims received after that date will not be processed. A decision refusing to process a claim submitted after the above date will constitute final agency action. These regulations, from [the effective date of the final rule] shall serve as notice for purposes of the Quiet Title Act, 28 U.S.C. 2409a, that the

United States claims an adverse interest in any purported rights-of-way traversing Federal lands claimed pursuant to R.S. 2477; provided, however, that this provision will not interfere with or affect any prior notice that might have been given of an adverse Federal claim.

§ 39.8 Processing of claims.

(a) *Additional information.* The authorized officer will review the claim to determine whether it is complete and provides sufficient information to allow a review of the claim. Where the authorized officer determines that additional information is necessary, he or she will notify the claimant in writing of the deficiencies and afford a reasonable opportunity for the claimant to supply such information. Failure of a claimant to respond to a request for additional information shall be deemed to constitute a relinquishment of any rights purported to have been acquired under R.S. 2477. The authorized officer will not process claims if the claimant fails to respond to a request for additional information. A decision refusing to process incomplete claims will constitute final agency action.

(b) *Consultation with other Federal agencies.* The authorized officer will consult with any other Federal agencies that have management authority over lands crossed by the claim.

(c) *Consultation with the Bureau of Indian Affairs.* The authorized officer shall consult with the appropriate Area Office of the Bureau of Indian Affairs in any case in which a claim crosses land in any of the following categories:

(1) Land that is individually owned by Indians or Alaska Natives or any interest therein that is held in trust by the United States for the benefit of individual Indians or Alaska Natives and land or any interest therein held by individual Indians or Alaska Natives subject to Federal restrictions against alienation or encumbrance;

(2) Tribal land, which is land or any interest therein, title to which is held by the United States in trust for an Indian tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, including such land reserved for Bureau of Indian Affairs administrative purposes. Also included in this category are lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934, 48 Stat. 988, 25 U.S.C. 477; or

(3) Government owned land, which is land owned by the United States and under the jurisdiction of the Secretary and that was acquired or set aside solely for the use and benefit of Indians or Alaska Natives; or land for which an allotment application is pending and that was not included in the lands set forth in paragraphs (c) (1) and (2) of this section; or land that has been selected by but not yet conveyed to corporations created pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92–203, 7–8, 85 Stat. 688, 691–4 (1971).

(d) *Public notification of filing of a claim.* The authorized officer will publish in a newspaper of local distribution in the vicinity of the claim once a week for 3 consecutive weeks a notice of filing of the claim. The public comment period will begin the day after the last publication date and last for a minimum of 30 days. The notice of filing will include:

(1) The name and mailing address of the claimant;

(2) The name or number and location of the right-of-way claimed to have been validly acquired pursuant to R.S. 2477 as identified on the claimant's formal public highway records;

(3) The office in which the claim was filed;

(4) Notice of availability of the claim for public inspection and review;

(5) The address where public comments may be mailed; and

(6) The date after which public comments will not be considered.

(e) *Disqualification of the claim.* The authorized officer will not process a claim if the subject right-of-way has been previously judicially or administratively determined not to be a validly acquired right-of-way pursuant to R.S. 2477.

(f) *Review of the claim.* The authorized officer will review the claim and determine whether it contains sufficient evidence to prove that the right-of-way was validly acquired pursuant to R.S. 2477.

(g) *Administrative determination.*

(1) After review of the information submitted by the claimant, review of Bureau of Land Management official public land records, review of any applicable State law, consultation with affected Federal agencies, and consideration of public comment, if any, the authorized officer will prepare an administrative determination.

(2) The administrative determination will not be final until it is concurred in by the authorized officer of the Bureau of Land Management, U.S. Fish and Wildlife Service, and National Park Service that has jurisdiction over lands crossed by the claim.

(3) The administrative determination will include a finding of whether a right-of-way pursuant to R.S. 2477 on lands in the jurisdiction of the Bureau of Land Management, U.S. Fish and Wildlife Service, and National Park Service was validly acquired, and, if so, will describe the scope of the right-of-way.

(4) The final administrative determination will be sent to the claimant.

(h) *Public notification of administrative determination.* The authorized officer will publish a notice of the administrative determination in a newspaper of general distribution in the vicinity of the claim and in the **Federal Register**. A copy of the administrative determination will be sent to the claimant.

§ 39.9 Appeals procedure from administrative determinations.

(a) Administrative determinations of the authorized officer will be put into full force and effect 30 days after publication in the **Federal Register** unless an appeal under this section is filed during that time.

(b) Any person or entity adversely affected by an administrative determination under this part may appeal the administrative determination to the Director of the Bureau or Service of the authorized officer.

(1) The appeal shall be in writing and shall be filed with the Director within 30 days of the date of publication in the **Federal Register**. If the appellant is other than the claimant, the appellant shall send a copy of the appeal to the claimant at the same time.

(2) The appeal shall contain:

(i) The name, address, telephone number, and interest of the person filing the appeal;

(ii) A statement of the issue or issues being appealed; and

(iii) A concise statement explaining why the appellant believes that the authorized officer's administrative determination is factually or legally wrong.

(c) The official files of the authorized officer and any statements or documents submitted by the claimant or the public on which the decision of the authorized officer was based shall constitute the record on appeal. If the appellant is other than the claimant, the claimant shall be offered an opportunity to comment on the appellant's statements made under paragraph (b)(2) of this section.

(d) If the Director considers the record inadequate to support the decision on appeal, he or she may require the production of such additional evidence or information as deemed appropriate, and may provide for a hearing as deemed appropriate.

(e) The Director will promptly render a decision on the appeal. The decision

will not be effective until it is concurred in by the Director of each Department of the Interior land managing agency that has jurisdiction over lands crossed by the claim. The decision will be in writing and will set forth the reasons for the decision. The decision will be sent to the appellant, and if the appellant is other than the claimant, to the claimant.

(f) The decision of the Director will be the final agency action of the Department of the Interior.

§ 39.10 Interim activity.

(a) During the processing of a claim and any administrative appeal, a claimant may perform routine maintenance.

(b) A claimant performing routine maintenance shall notify the appropriate office at least 3 business days in advance of the date the work is to be performed. Routine maintenance is subject to the approval of the appropriate office. The appropriate office as it applies to this section is the area or district office of the Bureau of Land Management, the Superintendent of the National Park System Unit, or the Manager of the National Wildlife Refuge, that has jurisdiction over the lands crossed by the portion of the claim on which the routine maintenance will take place.

(c) Interim activity authorized under this section shall be limited to those rights-of-way currently maintained by the claimant and after [*30 days plus 2 years after date of publication of final rule*] only those routes actually claimed by a claimant.

§ 39.11 Information collection. [Reserved]

George T. Frampton Jr.,

Assistant Secretary of the Interior.

Nancy K. Hayes,

Acting Assistant Secretary of the Interior.

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BILLING CODE 4310–84–P, 4310–55–P, 4310–70–P

Bureau of Land Management

43 CFR Part 2820

[WO–260–4210–02–24 1A]

RIN 1004–AB00

National Park Service

36 CFR Part 14

RIN 1024–AC01

Fish and Wildlife Service

50 CFR Part 29

RIN 1018–AC45

Revised Statute 2477 Rights-of-Way

AGENCIES: Bureau of Land Management, National Park Service, Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document announces that the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service—all agencies of the Department of the Interior (Department)—are currently considering whether to develop regulations or other administrative procedures to manage rights-of-way validly acquired pursuant to R.S. 2477, and if so, what kind of regulations to develop. If promulgated, such management regulations would apply solely to R.S. 2477 rights-of-way, and lands encumbered by such rights-of-way, across the respective jurisdictions of these three agencies, when those rights-of-way are determined to have been validly acquired in accordance with Departmental regulations (a proposal for these regulations is published separately today).

DATES: Comments must be submitted in writing by September 30, 1994.

ADDRESSES: Comments on this notice should be sent to: U.S. Department of the Interior, Main Interior Building, 1849 C Street, N.W., Room 5555, Washington, D.C. 20240. All comments received will be available for public review in Room 5555 at the above address between the hours of 7:45 a.m. and 4:15 p.m., Monday through Friday. Correspondents should specify whether their comments are directed generally or to the specific management programs of the National Park Service, U.S. Fish and Wildlife Service, or Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management: Ron Montagna, (202) 452–782, or Ted D. Stephenson, (801) 539–4100. National Park Service: Russel J. Wilson, (202) 208–7675. U.S. Fish and Wildlife Service: Duncan Brown, (703) 358–1744.

SUPPLEMENTARY INFORMATION: R.S. 2477, enacted in 1866 and repealed in 1976, granted rights-of-way for the construction of highways across unreserved public lands. Rights-of-way in existence on the date of repeal were not terminated. A proposed rule, published separately today, would provide clarification of this provision and a system for processing claims for validation of rights-of-way across Federal lands pursuant to R.S. 2477. The courts have explicitly recognized the authority of the Department to regulate such rights-of-way.

This notice announces that the Department's land managing agencies—the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service—are considering whether to manage R.S. 2477 rights-of-way under existing legal authorities, to promulgate additional regulations (and if so what form of regulations), or to develop other administrative procedures to govern R.S. 2477 rights-of-way after they have been determined to have been validly acquired under Departmental regulations.

The Department solicits comments on how it should regulate validly acquired R.S. 2477 rights-of-way. Each agency has existing regulations dealing generally with rights-of-way (for the Bureau of Land Management, see 43 CFR part 2800; for the National Park Service, see 36 CFR part 14; for the U.S. Fish and Wildlife Service, see 50 CFR part 29). One option would be to administer R.S. 2477 rights-of-way under existing agency right-of-way regulations. This option might be workable for agencies and holders and would avoid creating a separate system for one narrow class of rights-of-way. The Department solicits comments specifically on whether existing right-of-way regulations would adequately protect public resources while providing a workable framework for holders of R.S. 2477 rights-of-way.

If commenters do not believe that existing right-of-way regulations could meet these goals if applied specifically to R.S. 2477 rights-of-way, the Department solicits specific comments on which provisions do and which provisions do not, as well as suggestions for alternative provisions, as they relate to R.S. 2477 rights-of-way.

The Department solicits comments specifically addressing whether there are valid reasons to establish separate regulations for R.S. 2477 rights-of-way.